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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 24 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Tuesday, May 28, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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P R O C E E D I N G SMay 28, 2024

(Court in session.)

(Defendant present. Jury present.)

THE COURT: I'll see counsel at sidebar.

(Whereupon, there was a sidebar conference as follows:)

THE COURT: Good morning. I am going to give a little instruction on Mr. Jackson not being here and they are not to consider it.

MR. YANNETTI: That's fine.

THE COURT: But you're not to say anything about it.

MR. YANNETTI: I won't.

THE COURT: Okay. Thank you.

(Whereupon, the sidebar conference concluded.)

THE CLERK: 22-117, Commonwealth versus Karen Read.

Can I have counsel identify themselves for the record?

MR. LALLY: Adam Lally, for the Commonwealth. Good morning, Your Honor.

THE COURT: Good morning, Mr. Lally.

MS. MC LAUGHLIN: Good morning, Your Honor. Laura McLaughlin, for the Commonwealth.

1 THE COURT: Good morning, Ms. McLaughlin.

2 MS. LITTLE: Good morning, Your Honor.

3 Elizabeth Little, on behalf of Ms. Read.

4 THE COURT: Good morning, Ms. Little.

5 MR. YANNETTI: Good morning, Your Honor.

6 David Yannetti, for Karen Read.

7 THE COURT: Good morning, Mr. Yannetti.

8 Good morning, jurors. So before we begin, I
9 just want to mention that Attorney Jackson is not
10 here today. Please don't consider that in any way.
11 Certainly don't hold it against Ms. Read for him
12 not being here. Just don't consider it at all in
13 your deliberations.

14 So I do have to ask you those three questions.
15 Were you all able to follow my instructions and
16 refrain from discussing this case with anyone?

17 Everyone said "yes" or nodded affirmatively.

18 Were you also able to follow the instruction
19 and refrain from doing any independent research or
20 investigation into this case?

21 Everyone said "yes" or nodded affirmatively.

22 Did anyone happen to see, hear or read
23 anything about this case since we left here on
24 Friday?

25 Everyone said "no."

1 All right. Let's bring Mr. Higgins in,
2 please. And, Mr. Yannetti, you will be taking
3 over?

4 MR. YANNETTI: I will, Your Honor.

5 THE WITNESS: Good morning, Your Honor.

6 THE COURT: Good morning.

7 Whereupon,

8 BRIAN HIGGINS, Resuming

9 having been first previously sworn, was examined
10 and testified under oath as follows:

11 MR. YANNETTI: May I proceed, Your Honor?

12 THE COURT: Yes.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. YANNETTI:

15 Q Sir, you provided to investigators what you
16 claim were the complete text exchanges between yourself
17 and Karen Read and yourself and John O'Keefe, correct?

18 A What I provided was the complete -- I let them
19 know it was a complete exchange between myself and the
20 defendant. And I said that I may have had other text
21 strings at other times with Mr. O'Keefe.

22 Q I am going to proceed to ask you a series of
23 questions which call for a yes-or-no answer. Can we
24 agree that you'll answer yes or no to those questions?

25 A If I can answer yes or no to the best of my

1 ability, I will.

2 Q All right. I'm going to keep the question
3 very simple, sir. Okay?

4 You did not provide to investigators any other
5 text messages between you and anyone else?

6 A That's correct.

7 Q In September of 2022, you were served with a
8 preservation order for your phone, were you not?

9 A Yes.

10 Q After September of 2022, you never received
11 anything in writing that cancelled or lifted that
12 preservation order, correct?

13 A That's correct.

14 Q After September of 2022, you made the decision
15 to dispose of your phone without consulting anybody
16 about the decision to throw out your phone, correct?

17 A Yes.

18 Q Before you threw the phone away, you did a
19 factory reset of it; did you not?

20 A No, I did not.

21 Q Well, you've previously testified that you
22 testified in another proceeding on June 1st, correct,
23 of 2023?

24 A Yes.

25 Q Prior to that June 1st testimony, you met with

1 some people and gave a statement on May 5th of 2023;
2 did you not?

3 A I did meet with them. I don't know if that
4 was the date.

5 Q Okay. It was prior to June, correct?

6 A Yes.

7 Q All right. May 5th doesn't sound wildly
8 inaccurate, does it?

9 A No.

10 Q And, when you met with those people on or
11 about May 5th, we'll say, or whatever date it was prior
12 to June 1st of 2023, you told them that you did a
13 factory reset of your phone ending in 5421, did you
14 not?

15 A I don't recall that, no.

16 Q All right.

17 A I don't recall that, no. I don't recall
18 making that statement.

19 Q You don't recall what you said about the
20 factory reset during that interview, we'll call it, in
21 May of 2023, correct?

22 A That's correct.

23 MR. YANNETTI: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. YANNETTI:

1 Q I direct your attention to the first
2 highlighted line there, sir. If you would read that
3 silently to yourself and look up at me when you're
4 done.

5 A (Witness complies.)

6 MR. YANNETTI: If I may approach?

7 THE COURT: Yes.

8 BY MR. YANNETTI:

9 Q Having read that document, sir, does that
10 refresh your memory about telling those people in May
11 of 2023 that you do a factory reset of your phone?

12 A That's not accurate. I did not tell them
13 that. And I also didn't tell them that I saved texts
14 with my father.

15 Q All right. So your testimony is that they got
16 it wrong, correct?

17 A My testimony is I didn't make those
18 statements.

19 Q Your testimony is that they got it wrong. Yes
20 or no.

21 MR. LALLY: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. YANNETTI:

24 Q Well, in any case, you took the SIM card out
25 of your phone, correct?

1 A No. What I testified is that --

2 Q Did you take the SIM card out of your phone?
3 Yes or no.

4 A I don't know.

5 Q Did you testify that that's what you do when
6 you get rid of phones, sir?

7 A What I said was that might have been the
8 extent of it if I was to have done that.

9 Q And you either cut up the SIM or ripped it up,
10 correct?

11 A I believe what I testified to was --

12 Q I'm not asking you what you testified to. I'm
13 asking you today, did you either cut up the SIM card or
14 rip it up?

15 A Cut it up or broke it.

16 Q And you will agree with me that cutting up or
17 breaking the SIM card destroys the SIM card; does it
18 not?

19 A The card, itself, yes.

20 Q That would have been the purpose in terms of
21 cutting it up or ripping it up, to destroy it, correct?

22 A Well, so nobody else could use the phone.

23 Q Well, that was my next question. But the
24 purpose of cutting up or ripping up the SIM card is to
25 destroy the SIM card; is it not?

1 A Yes.

2 Q And you wanted to make sure that somebody
3 couldn't put that SIM card in their phone and
4 potentially access your data, correct?

5 A No. That wouldn't be the reason why.

6 Q Okay. Well, we already talked about the fact
7 that you testified under oath on June 1st of 2023,
8 correct?

9 A Yes.

10 Q And you were under oath when you were
11 testifying on June 1st of 2023, correct?

12 A Yes.

13 Q You swore to tell the truth?

14 A Yes.

15 Q You raised your right hand?

16 A That's correct.

17 Q And June of '23, June 1st of 2023, was about a
18 year ago, correct?

19 A Yes.

20 Q It was about a year closer to your throwing
21 your phone away, correct?

22 A Yes.

23 Q And, in that testimony that you gave on June
24 1st of 2023, did you say the following: (As read), "I
25 made sure that somebody couldn't put it in their

1 phone"?

2 A Yes. I did say that.

3 Q In fact, by either cutting up or ripping up
4 your SIM card, you also knew that that SIM card
5 couldn't be put back in your phone either, correct?

6 A Yeah. I believe that would be correct.

7 Q And you'll agree with me that you took that
8 destroyed SIM card and put it in a trash bag, did you
9 not?

10 A I believe it went in a trash bag, yes.

11 Q Well, you used a passive voice. It went in a
12 trash bag. Did it fly out of your hand unexpectedly
13 into a trash bag, sir?

14 A No, sir. It would have been disposed of with
15 the phone.

16 Q No. I understand. But are you reluctant to
17 say that you put it in a trash bag, sir?

18 MR. LALLY: Objection.

19 THE COURT: Can you answer that? Are you
20 reluctant to say that?

21 THE WITNESS: No, Your Honor. I put it in a
22 trash bag or with my trash.

23 BY MR. YANNETTI:

24 Q And then you also took your phone, now without
25 the SIM card, and you put that in a trash bag too, did

1 you not?

2 A Yes, sir.

3 Q Then you drove to a military base, and you
4 threw both the destroyed SIM card and the phone into a
5 dumpster, did you not?

6 A Well, I was cutting through the base, and I
7 believe how I testified was --

8 Q Did you drive through a military base, sir?

9 A I was cutting through a base, yes.

10 Q Did you drive to it?

11 A Yes, sir.

12 Q And then you put both the destroyed SIM card
13 and the phone, itself, which were in a trash bag, into
14 a dumpster on that military base, did you not?

15 A I believe that's what I did, yes.

16 Q And, as you were driving away, you knew that
17 that destroyed SIM card and the phone would be gone
18 forever, correct?

19 A Yes. I threw it away.

20 Q And, before you drove away, you did not
21 transfer anything from your old phone to the new phone,
22 correct?

23 A That's correct.

24 Q You lost all of your photos on that phone, did
25 you not?

1 A Whatever photos I had on there, I did, yes.

2 Q You lost all your videos on that phone, did
3 you not?

4 A To the extent if I had any.

5 Q You lost all of your other text messages
6 besides the ones that you had with Karen Read and John
7 O'Keefe, correct?

8 A That's correct.

9 Q And you knew that you did have text messages
10 on that old phone with Kevin Albert?

11 A He is a friend. Most likely.

12 Q You also had text messages on your phone with
13 Nicole Albert?

14 A Most likely, yes.

15 Q And you had text messages on your phone with
16 Brian Albert?

17 A Yes.

18 Q It was important to you that no one see those
19 text exchanges that you had with those three members of
20 the Albert family?

21 MR. LALLY: Objection.

22 THE COURT: I'll allow it.

23 THE WITNESS: No, sir. That's not true.

24 BY MR. YANNETTI:

25 Q You took no steps to preserve those text

1 messages, did you?

2 A That's correct.

3 Q You did not ask your friend, Matt Kelch, the
4 agent, to help you extract those text messages, did
5 you?

6 A That's correct.

7 Q And, when you went to that machine, you did
8 not extract them yourself, did you?

9 A He walked me through, and I did do the
10 extraction.

11 Q You did not extract the three strands of text
12 messages with Nicole Albert, Kevin Albert and Brian
13 Albert to preserve from that machine, did you not?

14 A No. I did not extract those.

15 Q So the only place you knew they existed was on
16 your old phone, correct?

17 A Yes. That's correct.

18 Q The same phone that you put into a dumpster on
19 a military base with the SIM card removed from the
20 phone and destroyed, correct?

21 A Well, I did throw the SIM card and the phone
22 in the military base.

23 Q Right. And the SIM card was destroyed.
24 You've already testified to that.

25 A I said to the extent of if I did that, I would

1 have done that.

2 Q And we are talking about the actual phone that
3 would have had your text messages, again, with Brian,
4 Nicole and Kevin Albert, correct?

5 A Yes, because the motion was denied.

6 Q Well, you've already testified, sir, earlier
7 that you never received anything in writing that either
8 cancelled or lifted the original preservation order,
9 correct?

10 A That is correct.

11 Q You knew when you were throwing that phone and
12 the destroyed SIM card in the dumpster that from that
13 day forward, no one would ever be able to access the
14 content of what you and Brian Albert had discussed by
15 text messages on your old phone, correct?

16 A Anybody.

17 MR. YANNETTI: I have nothing further.

18 THE COURT: Mr. Lally?

19 MR. LALLY: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. LALLY:

22 Q Good morning, sir.

23 A Good morning, sir.

24 Q If I could take you back just for a moment to
25 January 29th, early in the morning. You're pulling

1 away from the Albert home, correct?

2 A Yes.

3 Q And you had the plow down on the front of your
4 Jeep Wrangler; is that correct?

5 A Initially, it was still on the ground. Yes.

6 Q And about how long a distance again was that
7 on the ground before you pulled that up?

8 A Maybe a foot.

9 Q And, with relation to the curb specifically in
10 front of the area with the flagpole and the fire
11 hydrant, how close to the curb were you when you were
12 pulling away from the Albert house?

13 A I believe I looked both ways. There were no
14 vehicles coming in either direction. I pulled out into
15 traffic. And, because that is a one-lane road, if
16 there's no other vehicles, I'd be more to the center of
17 that road.

18 Q Now, it may be a silly question, but with
19 reference to the front of your Jeep Wrangler, that
20 didn't have any red plastic pieces or anything like
21 that on the front of it, correct?

22 A At what time? At what point?

23 Q At any time.

24 A No.

25 Q And that's the same Jeep Wrangler that you

1 then drove to the Canton Police Station immediately
2 after?

3 A Directly from there, yes.

4 Q And then you drove that same Jeep Wrangler
5 back to your home in West Roxbury?

6 A Yes.

7 Q And then you drove that same Jeep Wrangler
8 back to Fairview Road later on that morning?

9 A Yes.

10 Q And then you drove that same Jeep Wrangler
11 from Fairview Road to the Canton Police Station again
12 later that morning, correct?

13 A Yes.

14 Q Now, the text communications between yourself
15 and Ms. Read, again, who initiated those?

16 A The defendant did.

17 Q And that was on January 12th of 2022, correct?

18 A About 8:23 in the evening, I believe.

19 Q Now, with reference to that -- what she
20 claimed happened in Aruba, that was something she
21 mentioned to you via text, correct?

22 A The incident, itself, I believe was through
23 text. But I believe the actual location was when she
24 had stopped by my place in West Roxbury.

25 Q So that's to my point. So, sir, with regard

1 to the incident, itself, she referenced that both via
2 text and in person to you, as well?

3 A Yes. That's correct.

4 Q And the kiss that she planted on you in the
5 garage at Mr. O'Keefe's house, that was again something
6 that she mentioned both in text and verbally in person;
7 is that correct?

8 A Yes. That's correct.

9 Q Now, as far as the ghosting that you were
10 asked questions about last Friday, there were some text
11 messages between you and the defendant on January 19th,
12 correct?

13 A What was the date? I'm sorry.

14 Q January 19th.

15 A 19th?

16 Q Yes.

17 A Yes.

18 Q And do you recall if there were any text
19 messages between you going either way between yourself
20 and the defendant between January 19th and January
21 23rd?

22 A I think there were. I'm not 100 percent.

23 MR. LALLY: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. LALLY:

1 Q Sir, I'm going to show you what's been marked
2 as Exhibit 104A. I direct your attention to sort of
3 that there, specifically, the back page but a little
4 bit before that, as well.

5 If you could, just let me know whether or not
6 there are any text messages between yourself and the
7 defendant, Ms. Read, between January 19th and January
8 23rd?

9 A Yes. It looks like the 19th and the 23rd,
10 both text messages.

11 Q Okay. But, in between those dates, what I'm
12 asking about is January 20th, January 21st, January
13 22nd. There's no text messages on any of those dates,
14 correct?

15 A I don't see any.

16 Q And then as far as between January 23rd and
17 January 28th, January 28th is when you texted her while
18 you were both within the Waterfall, correct?

19 A On the 28th, yes.

20 Q So between the 23rd and the 28th. So on
21 January 24th, January 25th, January 26th, January 27th,
22 you didn't send any text messages to her. You didn't
23 receive any phone call, correct?

24 A I don't believe so, no.

25 Q And then beyond that one text message that you

1 testified to on the 28th, the next text message you
2 received from the defendant was in regard to John being
3 dead on the 29th, correct?

4 A Yes. That's correct.

5 Q Now, you were asked some questions about these
6 text messages and whether or not you discussed them
7 with various people.

8 Did you discuss those text messages with
9 anyone?

10 A Not to my knowledge, no.

11 Q Why not, sir?

12 A To be honest with you, I mean, on a personal
13 level, I kind of keep things to myself. I was a little
14 embarrassed. I wasn't really proud of them. It kind
15 of maybe didn't show me in a good light with respects
16 that I was John's friend.

17 Q And so with regard to that text on January
18 28th that you had sent her in the Waterfall, she didn't
19 respond as she was in the Waterfall with her boyfriend,
20 Mr. O'Keefe, correct?

21 A That's correct.

22 Q Now, if the defendant did not have a
23 boyfriend, wasn't dating Mr. O'Keefe, would you have
24 been interested in pursuing anything further with the
25 defendant?

1 A I can't say. I don't know.

2 Q What, if any, reservations would you have
3 based on the conversations that you had?

4 A Just everything was so out of left field. I
5 just found it hard to believe.

6 Q Now, with reference to going to the Canton
7 Police Station after Fairview Road and moving the
8 vehicles around, which is closer to the Canton Police
9 Station, your home in West Roxbury or the home on
10 Fairview Road?

11 A The home on Fairview Road would be.

12 Q And, with the impending weather, why was it
13 that you went to the Canton Police Station to move the
14 vehicles around on that occasion?

15 A Because, as I stated before, if I didn't do it
16 then, I would have had to come back in the morning. I
17 knew the weather was going to be getting worse. I knew
18 that I had a long day. I had been in New York. I had
19 been out the night before in New York and I just
20 thought it was best to get them moved at that point.

21 Q Now, you were asked some questions on Friday
22 about a phone call or something in a call log from
23 about 2:00 o'clock or 2:22 in the morning of January
24 29th. Do you recall that?

25 A I recall the questions, yes.

1 Q And you have an iPhone or you had an iPhone;
2 is that correct?

3 A Yes.

4 Q Now, when you make a call on an iPhone, as you
5 sort of place that call or you hit the button, there's
6 sort of a timer that comes up and it starts counting
7 off seconds as the call is being connected, correct?

8 A I believe so.

9 MR. YANNETTI: Objection.

10 THE COURT: I'll allow it.

11 BY MR. LALLY:

12 Q And so seconds are ticking off while the call
13 is being connected, correct?

14 A I believe so, yes.

15 Q And then, if a call is connected, then it
16 starts ringing and, unless someone picks up
17 immediately, there are further seconds that are ticking
18 off on an iPhone while that call is ringing through,
19 correct?

20 A I believe so.

21 MR. YANNETTI: Objection.

22 THE COURT: The objection is sustained as to
23 the form.

24 BY MR. LALLY:

25 Q You were asked some questions about a call or

1 a callback between yourself and Brian Albert around
2 that time frame. Do you recall that?

3 A Yes.

4 Q And you were trying to explain sort of what
5 your answers were in that prior proceeding in reference
6 to that, correct?

7 A Yes.

8 Q What, if anything else, did you want to
9 explain to the jury in regard to that?

10 MR. YANNETTI: Objection.

11 THE COURT: In that form, I'll sustain it.

12 BY MR. LALLY:

13 Q You were asked some specific points as far as
14 your testimony in a prior proceeding, correct?

15 A Yes.

16 Q What, if anything else, did you say in
17 reference to that in the prior proceeding?

18 MR. YANNETTI: Objection.

19 THE COURT: Sustained as to the form,

20 Mr. Lally.

21 BY MR. LALLY:

22 Q Did you ever speak with Brian Albert at 2:22
23 in the morning on January 29th?

24 A No, I did not.

25 Q Do you recall making a call or receiving a

1 call from Brian Albert around that time?

2 A No, I do not.

3 Q You were asked some questions on Friday
4 regarding keycard access within the Canton Police
5 Station, correct?

6 A Yes.

7 Q Now, as far as that door that you utilized,
8 you had testified on Friday that you would sort of park
9 down towards the back and then come in through the
10 sally port area; is that correct?

11 A So I believe I was referring to one of the two
12 sally port doors.

13 Q And that was sort of your cut-through in order
14 to get to your office?

15 A Yes.

16 Q Now, with reference to that particular area as
17 far as going in and out from the parking lot and the
18 sally port, does the keycard -- do you have to swipe
19 the keycard in order to go in and to go out?

20 A So sometimes if you're close to the door,
21 maybe having a conversation with somebody, it could
22 activate the keycard, itself. But, physically, if I'm
23 going into the door, I would take it out and I would
24 swipe it. I would hold it to the card reader. Some
25 are more sensitive than others, is what I'm trying to

1 say.

2 Q And, similar to when you're, when you're going
3 out, does that require sort of swiping or using the
4 keycard in order to go outside?

5 A So there are some doors that you need to swipe
6 out of. And I believe the booking room and the sally
7 port, itself, are doors such as those.

8 MR. LALLY: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q I'm showing you a document. I place one
12 before you now. If you could just take a look at that
13 and look up when you're finished?

14 A (Witness complies.)

15 Q Do you recognize that, sir?

16 A Yes.

17 Q Is that the same document that was --
18 essentially the same document that was placed before
19 you on Friday?

20 A Yes.

21 Q Okay. And that's a 167-page document
22 encapsulating different key swipes within the Canton
23 Police Station on January 29th, 2022, correct?

24 A Yes.

25 Q And, from those 167 pages, at least on that

1 first page, does there appear to be about 27 entries
2 there?

3 A Yes.

4 Q And so from 27 entries over the course of 167
5 pages, that would be somewhere north of 4,500 entries
6 within those 167 pages. Does that sound right?

7 A Well, I went to public high school, but I'll
8 take your word for it.

9 Q And would it surprise you that there are 18
10 entries within those --

11 MR. YANNETTI: Objection.

12 BY MR. LALLY:

13 Q -- 4,500 that include --

14 THE COURT: Not would it surprise him. Ask
15 the question again, Mr. Lally.

16 BY MR. LALLY:

17 Q Do you know that there are 18 entries that
18 contain your name within those records?

19 MR. YANNETTI: Objection. Form of the
20 question.

21 THE COURT: No. I'll allow it.

22 THE WITNESS: Are you asking me if in the 167
23 pages there's only 18 entries with me?

24 BY MR. LALLY:

25 Q Yes.

1 A I did not know that, no.

2 Q Would that surprise you as far as your --
3 well, let me rephrase that.

4 Now, with respect to your travels around
5 Canton Police Station on that particular day, would you
6 quarrel with 18 entries as far as where you went and
7 what you did in Canton P.D. that day?

8 A No. In and out. No.

9 Q Now, sir, with respect to your phone, you were
10 provided notation in regard to a preservation order in
11 regard to your phone sometime in September of 2022,
12 correct?

13 A I received a subpoena on September 30th of
14 2022.

15 Q And that was in regard to a hearing in which
16 counsel for the defendant was seeking your physical
17 phone as evidence, correct?

18 A Yes.

19 Q And is it your understanding or were you
20 informed after that day, sometime in early October of
21 2022, that that motion had been denied?

22 A So I believe it was October 21st of that year
23 I was made aware that that was denied on actually
24 October 5th.

25 Q Are you aware of a 30-day period by which a

1 defendant has to file some sort of notice of appeal of
2 a motion?

3 MR. YANNETTI: Objection.

4 THE COURT: I'll allow it.

5 THE WITNESS: I know typically there's appeal
6 periods. In this particular sense, I wasn't
7 familiar with the preservation order, itself, what
8 a preservation order was with respects to -- that
9 was kind of all new to me. Usually in an
10 investigation that I'm conducting, it's a search
11 warrant. I take the phone. I don't have to ask
12 people to preserve it through a court order, if
13 that makes sense.

14 BY MR. LALLY:

15 Q And so when was it that you disposed of your
16 phone?

17 A It was about two months after that.

18 Q And why was it that you disposed of your
19 phone?

20 A Because it was beaten. It was broken up. And
21 I had already had a new phone. The only explanation is
22 I threw it away. That's it.

23 Q Now, beyond sort of this case, what, if
24 anything else, was going on with reference to your
25 personal phone that led you to want to get rid of it?

1 A So in July of 2022, I had a target of an
2 investigation I was working who alleged that -- he
3 called me on my personal cell phone. And, when I
4 questioned him as to the fact of how he obtained my
5 personal telephone number, he told me that his
6 girlfriend had obtained it off of Opensource internet,
7 which I later confirmed that that number was out there.

8 Q What, if any, concerns did that raise for you,
9 sir?

10 A Well, I had a lot of concerns. And that's --
11 so July 22 is when I probably started thinking about,
12 you know what, I got to get rid of the telephone
13 number, itself.

14 Q And a lot of the work that you were doing, at
15 least at that time, was undercover work; is that
16 correct?

17 A Before this case right here, yes.

18 Q Now, as far as the SIM card that you're
19 talking about, do you have any specific memory of doing
20 anything with that SIM card?

21 A No, and that's how I testified in that other
22 hearing, that to the extent of what I would have done
23 is I would have cut it up or broke it. And the concern
24 would be that that -- to my understanding, that's not
25 holding any photos. That's not holding videos. That's

1 not holding my contacts. It's holding phone
2 information, itself.

3 Q And, as far as photos or videos, what, if
4 anything like that, did you even have on your phone?

5 A I didn't have much in the sense that I'm
6 divorced. I don't have kids. I didn't have the
7 typical memories that somebody would have had on their
8 phone that they wanted to preserve. They were more
9 like the text messages with the defendant where it
10 would be a drink glass at a bar, food. Something along
11 those lines. I had more of a connection to my work
12 phone and more of a value to my work phone than I did
13 my personal phone.

14 Q Now, as far as that military base down the
15 Cape, how often -- let me ask you this: When you lived
16 at the residence in Barnstable County, what would you
17 do with your trash down there?

18 A Well, if I was going through and I had the
19 trash or some recycling and I was either getting gas on
20 the base or hitting the duty-free, I would occasionally
21 toss a bag of trash in one of the dumpsters there. Or,
22 if I forgot, I would throw it out when I got back to my
23 other property. And, at the time at one point, I was
24 living in Canton and I had the house there. And then I
25 sold it. And then I had the in-law that I was renting.

1 So I had other options to throw things away.

2 Q Did you have trash pickup at your residence in
3 Barnstable?

4 A No.

5 Q So if you were to throw away anything, any
6 sort of trash, it would have to be either at the base
7 or at one of your other homes?

8 A It would be somewhere else.

9 Q And so with reference to the phone and the SIM
10 card, if you even did, did you drive specifically to
11 the base to throw your phone away or were you throwing
12 it away with other trash?

13 A It was just with other trash.

14 Q Now, you were shown some call logs or some
15 toll records or something to that effect last Friday
16 with respect to calls that you had made or received
17 around January 29th, 2022; is that correct?

18 A Yes.

19 Q And was that anything that you had
20 specifically preserved and given to the troopers or
21 that was something that someone was able to obtain
22 either without your phone or without your SIM card,
23 correct?

24 A That's correct.

25 MR. LALLY: May I approach just to retrieve,

1 Your Honor?

2 THE COURT: Yes.

3 MR. LALLY: One moment, Your Honor?

4 THE COURT: Yes.

5 BY MR. LALLY:

6 Q Now, sir, going back to January 29th, pulling
7 away from the residence on Fairview Road, you didn't
8 see anything on the side of the road; is that correct?

9 A Absolutely not, no.

10 Q And what is it that you would have done had
11 you seen anything or had you seen Mr. O'Keefe on the
12 side of the road on January 29th?

13 A I've spent my whole life between being a
14 firefighter, working in the profession that I work now,
15 being a tactical medic. If I had seen John O'Keefe on
16 the side of the road, I would have done something to
17 make a difference.

18 MR. LALLY: I have no further questions.

19 MR. YANNETTI: May we approach, Your Honor?

20 THE COURT: Yes. Jurors, feel free to stand
21 up and stretch.

22 (Whereupon, there was a sidebar conference as
23 follows:)

24 MR. YANNETTI: Your Honor, Mr. Lally talked
25 about the entirety of the key log and keycard logs.

1 I am seeking to introduce those now through this
2 witness. Rather than do it before the jury, I
3 figured I'd come to sidebar first.

4 THE COURT: Do you object to them coming in
5 now?

6 MR. LALLY: No.

7 MR. YANNETTI: The only other issue, Your
8 Honor, is I don't have a clean copy. I have ones
9 that are highlighted. I know Mr. Lally has a clean
10 copy. We can get a clean copy. Can I offer them
11 now and then have them be marked as an exhibit at a
12 later point?

13 MR. LALLY: You can use my copy. That's fine.

14 MR. YANNETTI: Can I use your copy?

15 MR. LALLY: That's fine.

16 THE COURT: Will you be questioning, as well,
17 or are you just putting the records in?

18 MR. YANNETTI: Just a few questions.

19 THE COURT: Okay. Because I was going to say,
20 we can just do the records now if you want at
21 sidebar.

22 MR. YANNETTI: That would be great.

23 THE COURT: All right? Can I have your copy?
24 That way there -- all right. So stay here.

25 Does that make sense to both of you to do it

1 this way instead of in front of the jury?

2 MR. LALLY: It makes no difference.

3 MR. YANNETTI: I think we can acknowledge that
4 they've been introduced but that's it.

5 THE COURT: All right.

6 (Whereupon, the sidebar conference concluded.)

7 THE COURT: Madam Court Reporter, if you would
8 please mark this by agreement as the next exhibit.

9 (Whereupon, keycard logs were entered and marked
10 Exhibit No. 105 in Evidence.)

11 THE COURT REPORTER: Exhibit 105, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. YANNETTI:

14 Q Sir, you testified that a prime motivator of
15 you to get rid of your phone was a July 22nd call from
16 a target of an investigation that you were working on?

17 A I never said it was a prime motivator.

18 Q Was it a prime motivator?

19 A No. What I testified to was the phone number
20 was what I was concerned about primarily.

21 Q Right.

22 A It didn't have anything to do with the phone.

23 Q Okay. You did not change your phone number on
24 July 22nd, correct?

25 A July of 2022? Is that what you mean?

1 Q The date that you received a call supposedly
2 from a target of an investigation you were working on
3 was July 22nd of which year?

4 A So I believe it was July 25th of 2022.

5 Q July 25th?

6 A I was so concerned that I reported it to my
7 supervisor.

8 Q Right. But you did not change your phone
9 number after that for quite a while, correct?

10 A I believe it was September.

11 Q So for those months, you kept the same phone
12 number and kept the same phone, correct?

13 A I did.

14 Q And September happened to be the month that
15 you received the preservation order from this Court,
16 correct?

17 A September of '22, yes.

18 Q Now, with regard to the text exchanges that
19 you had with Karen Read, you testified that you were
20 embarrassed about them?

21 A I wasn't proud of them.

22 Q Right. I think your word was embarrassed,
23 correct?

24 A I can agree to that. That's fair.

25 Q Well, you already testified to that, right?

1 A I believe --

2 Q About five minutes ago?

3 A It might have been a word I used, yes.

4 Q And you also explained that you would keep
5 things like that to yourself, correct?

6 A That could be something, yes.

7 Q However, you would also agree with me that
8 while they were going on, you told your boss about that
9 text exchange, correct?

10 A Well, I told her about the kiss.

11 Q Do you deny telling your boss about the
12 texting that you were doing with Karen Read?

13 A I don't know if I specifically recall that,
14 no.

15 Q But you don't deny it, sir, correct?

16 A It's possible that I told her about that. I'm
17 not going to deny it.

18 Q All right. And, in any case, those text
19 exchanges were preserved. You preserved those before
20 disposing of your phone, correct?

21 A Correct.

22 Q And, with regard to the other text exchanges
23 that you did not preserve with the Alberts, including
24 Brian Albert, are you familiar with the term
25 "consciousness of guilt," Mr. Higgins?

1 MR. LALLY: Objection, Your Honor.

2 THE COURT: The objection is sustained.

3 MR. YANNETTI: Your Honor, may I have a
4 moment?

5 THE COURT: Yes.

6 BY MR. YANNETTI:

7 Q Just one more thing. With regard to the date
8 that you changed phone numbers on your phone, you'd
9 agree with me that was September 29th of 2022?

10 A When I actually changed the phone number?

11 Q That's what I just asked.

12 A Yes. I also got a new phone. Yes.

13 Q Okay. September 29th of 2022, you changed
14 your phone number and got a new phone and then
15 September 30th, the next day, you were served with the
16 preservation order, correct?

17 A I got the preservation order on the 30th.
18 That's correct.

19 MR. YANNETTI: Nothing further.

20 THE COURT: Okay, Mr. Higgins. You are all
21 set, sir.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: All right. Mr. Lally, who is your
24 next witness?

25 MR. LALLY: May we approach?

1 THE COURT: Yes.

2 (Whereupon, there is a sidebar conference as
3 follows:)

4 MR. LALLY: Your Honor, the next two witnesses
5 will be (c) and (c). I am not
6 entirely sure that they are here yet. I just am --
7 obviously, there are some things that we have to do
8 to accommodate them as far as the cameras are
9 involved.

10 THE COURT: Yes. All right. Which one is
11 going first?

12 MR. LALLY: (c)

13 THE COURT: All right. How old is he now?
14 Thirteen?

15 MR. LALLY: He is I want to say 12 or 13.

16 THE COURT: Does it make sense to take a short
17 recess? So you want to get him in the courtroom
18 beforehand?

19 MR. LALLY: If we could.

20 THE COURT: Is there any objection to that?

21 MR. YANNETTI: No objection.

22 THE COURT: So why don't we take maybe a 10-
23 minute recess and you can bring them into the
24 courtroom. A media order has gone out that they
25 can't transmit any of this. And you're all in

1 agreement with that, correct?

2 MR. YANNETTI: No objection.

3 THE COURT: Okay. So we will take a 10-minute
4 recess to set everything up, I guess. All right.

5 MR. LALLY: Thank you, Your Honor.

6 (Whereupon, the sidebar conference concluded.)

7 THE COURT: Jurors, we are going to take a 10-
8 minute recess and bring you back in in about 10
9 minutes.

10 (Whereupon, the jury is escorted from the courtroom
11 for a brief recess.)

12 THE COURT: So, Mr. Lally, your next witness
13 is a juvenile?

14 MR. LALLY: Yes, Your Honor.

15 THE COURT: All right. There is a specific
16 media order that there will be no transmission of
17 this testimony. And, by agreement of the parties,
18 the child witness will be sitting in the courtroom
19 in the witness stand when the jury comes back in.

20 That's by agreement, Mr. Yannetti?

21 MR. YANNETTI: Yes, Your Honor.

22 THE COURT: All right. So 10:00 o'clock or
23 so, we will come back out.

24 (Whereupon, there was a brief recess taken.)

25 (Court resumes.)

(Defendant present. Jury present.)

THE COURT: All right, Mr. Lally. Whenever
you are ready.

MR. LALLY: Thank you, your Honor.

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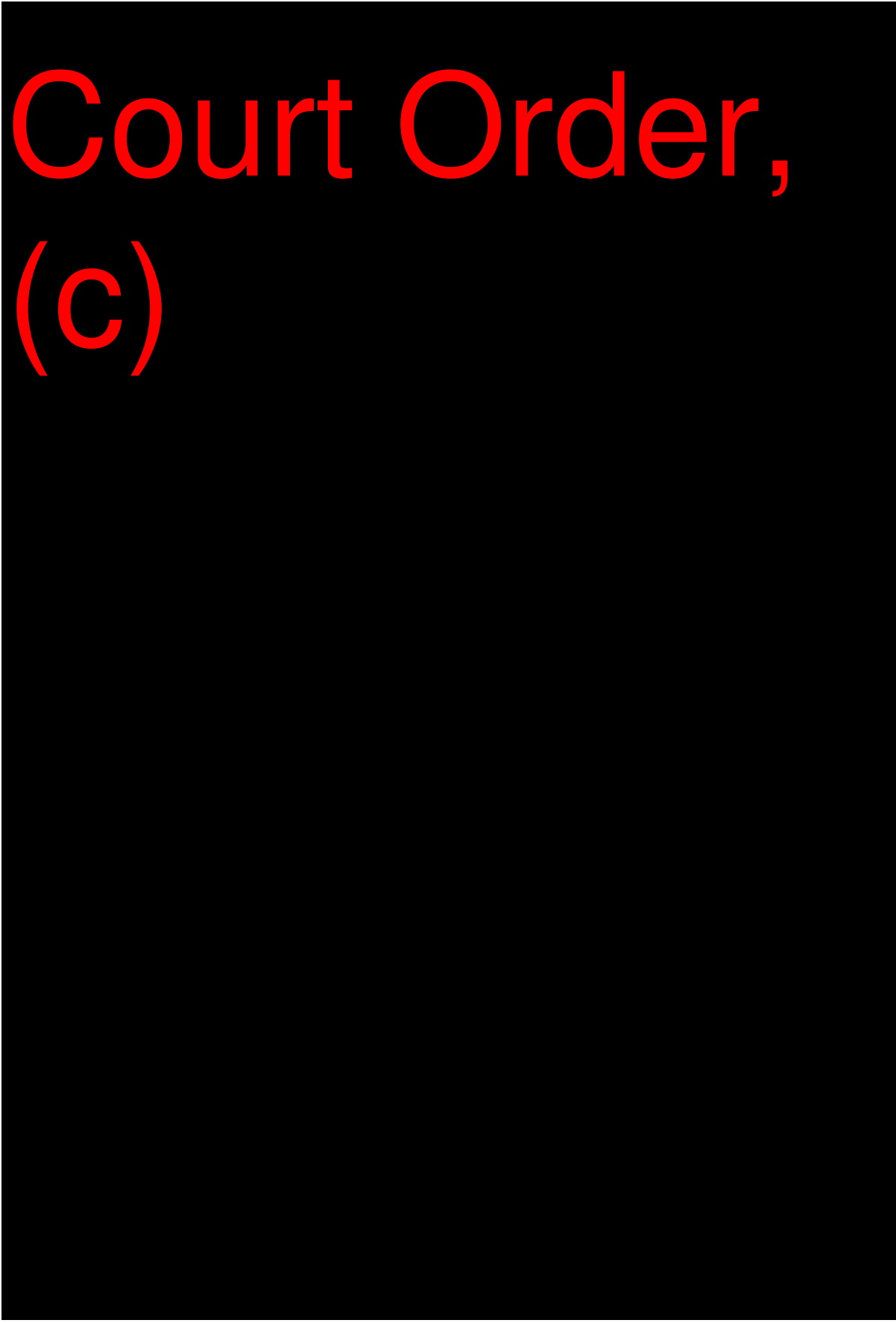
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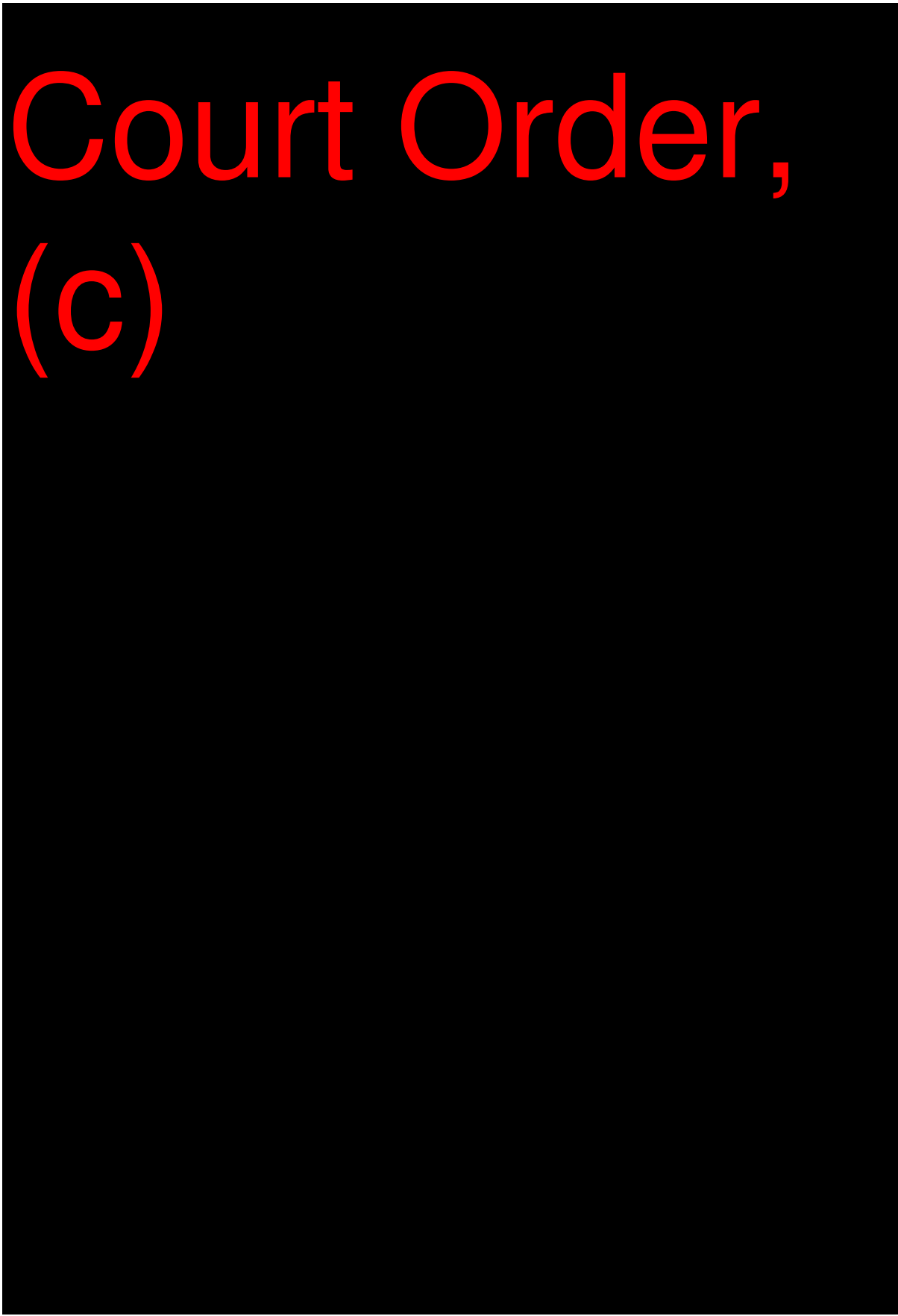
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THE COURT: All right. So jurors, I am
going to strike that last comment. The lawyers get

1 to talk to you in closing argument. You will hear
2 them then.

3 There's nothing, right?

4 MR. LALLY: Correct.

5 THE COURT: All right, you are all set.

6 Thank you.

7 THE WITNESS: (c), Court Order

8 THE COURT: Your next witness, Mr. Lally?

9 MR. LALLY: Yes, Your Honor. The next
10 witness will be a juvenile witness as well.

11 THE COURT: Mr. Lally, whenever you're
12 ready.

13 MR. LALLY: Thank you, Your Honor.

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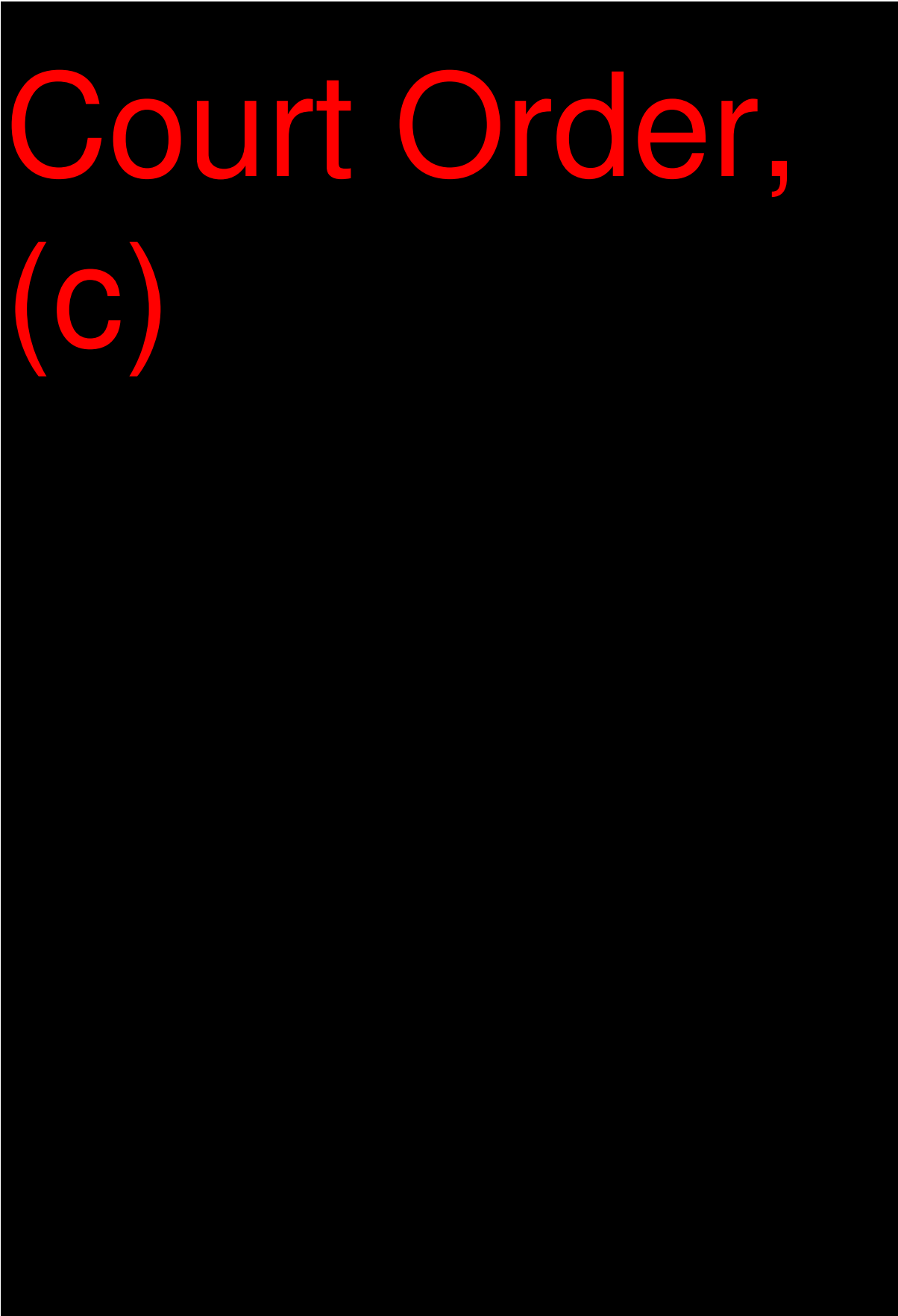
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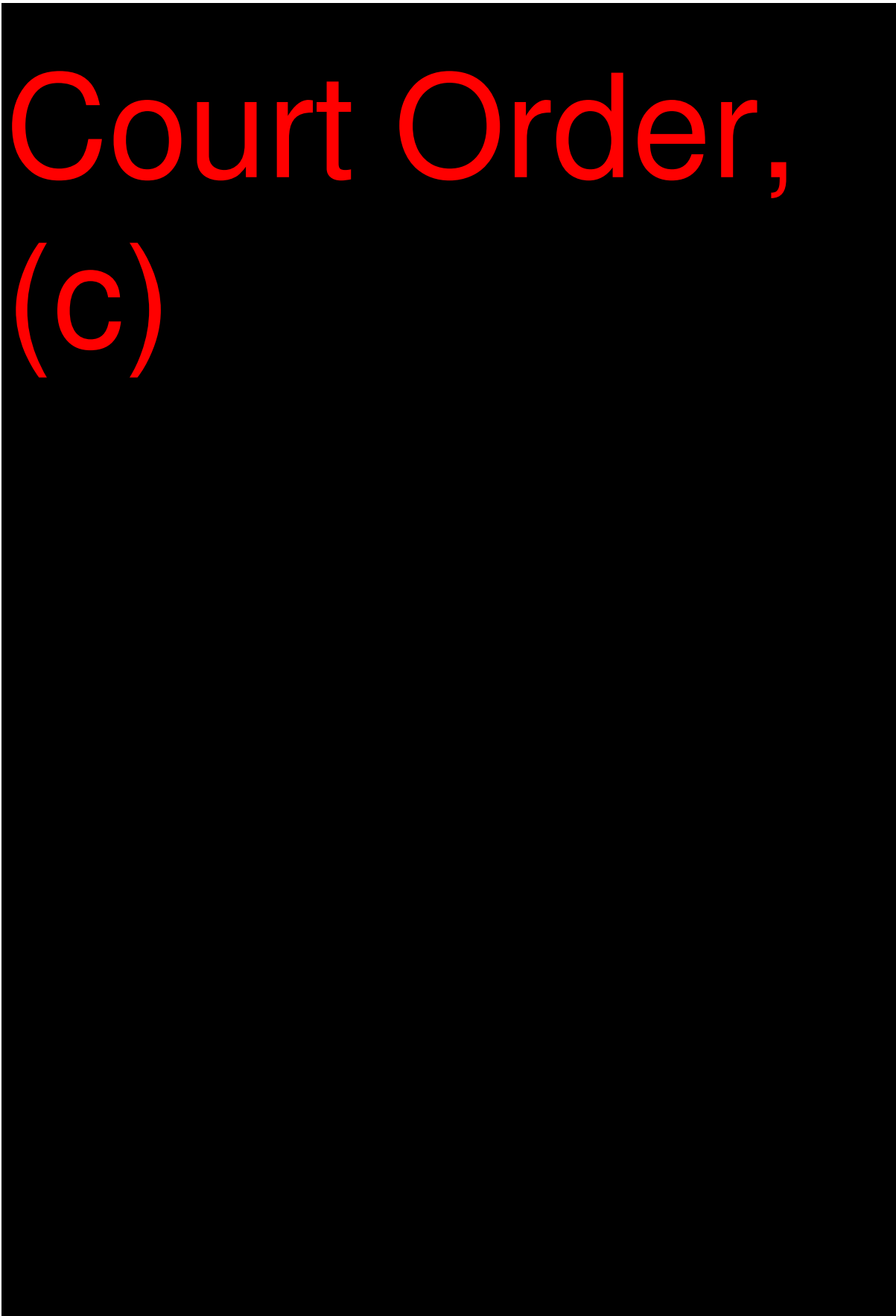


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THE COURT: All right, (c), you are all set. Thank you very much.

All right, Mr. Lally. Your next witness?

MR. LALLY: Your Honor, if it's --

THE COURT: Do you want to come to sidebar?

MR. LALLY: Yes.

(Whereupon, there was a sidebar conference as follows:)

THE COURT: So we had a very short break

1 around 10. I'll give the jury a little bit of a
2 break and then the press can set back up.

3 MR. LALLY: That's what I was thinking,
4 because we are going to shift into medical
5 testimony.

6 THE COURT: Who is your next witness?

7 MR. LALLY: Dr. Rice.

8 THE COURT: Okay.

9 (Whereupon, the sidebar conference concluded.)

10 THE COURT: Jurors, we took an abbreviated
11 recess last time, and I think you may have seen it
12 was to set up the courtroom a little bit
13 differently. So why don't we take a morning
14 recess. Why don't we take about 15 minutes or so.

15 (Whereupon, the jury is escorted from the courtroom
16 and a brief recess was taken.)

17 (Court resumes.)

18 (Defendant present. Jury present.)

19 THE COURT: All right, Mr. Lally. Your next
20 witness, please.

21 MR. LALLY: Yes, Your Honor. The Commonwealth
22 calls Dr. Justin Rice to the stand.

23 Whereupon,

24 JUSTIN RICE, M.D.

25 having been first duly sworn, was examined and

1 testified as follows:

2 THE COURT: All right, Mr. Lally. Whenever
3 you're ready.

4 MR. LALLY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LALLY:

7 Q Good afternoon, sir.

8 A Hi.

9 Q Could you please state your name and spell
10 your last name for the jury?

11 A My name is Justin Rice, R-I-C-E. Is that what
12 you asked me to spell?

13 Q And, sir, that microphone in front of you,
14 however you want to position that, it's flexible. So
15 if you want to bring it --

16 A Too far away. Is that better?

17 Q That's perfect. Thank you, sir.

18 And what do you do for work, sir?

19 A I'm an emergency medicine physician.

20 Q And how long have you been doing that?

21 A I finished my residency in 2008. So I've been
22 an attending since 2008.

23 Q And where is it that you work now?

24 A My current employer is South Shore Health.

25 Q And how long have you been working for South

1 Shore Health?

2 A I started there in October of this past year,
3 2023.

4 Q And where did you work prior to that?

5 A Before that, I had been full-time at Good
6 Samaritan Hospital in Brockton.

7 Q And how long was it that you worked at Good
8 Samaritan?

9 A Let's see. I started at Good Samaritan in
10 2010.

11 Q Now, sir, if I could, I'd like to just talk a
12 little bit about your educational background. Where
13 did you go to school as far as your undergrad was
14 concerned?

15 A I went to undergraduate at the College of
16 William and Mary in Williamsburg, Virginia.

17 Q And what, if any, degrees did you graduate
18 from there with?

19 A I obtained a Bachelor of Science in Chemistry.

20 Q And, following your graduation from there,
21 where did you go to school after that?

22 A So after that, I attended the University of
23 Virginia for medical school. Is that what you asked
24 me? I'm sorry.

25 Q Yes. And, following your graduation from

1 medical school, where did you go after that?

2 A Then I did an emergency medicine residency in
3 Philadelphia at University of Pennsylvania.

4 Q And what is a residency, sir?

5 A So a residency is several years of training.
6 That's where doctors will specialize, for me in
7 emergency medicine. Some people choose to be surgeons,
8 pediatricians. That's when more of the specialization,
9 if you will, happens in medical training.

10 Q And how long was your residency?

11 A It was four years.

12 Q And, following your residency, where did you
13 go from there?

14 A So I in 2008 finished residency. I worked for
15 two years in Manassas, Virginia at Prince William
16 Hospital for two years.

17 Q And are you board certified?

18 A I am by the American Board of Emergency
19 Medicine, yes.

20 Q And what is it that you're board certified in?

21 A Specifically, emergency medicine.

22 Q And, when you use that term as far as board
23 certification is concerned, what goes into that? What
24 does that entail?

25 A So when I obtained board certification, it was

1 a two-step process where there was a written exam
2 administered at one of the testing centers. And, after
3 you pass that, then there is an in-person oral exam, I
4 guess, is what they are called, where you are given
5 like didactic or individual cases. Assuming you pass
6 that, then you're board certified.

7 Q And your board certification is up to date
8 currently?

9 A Yes.

10 Q Now, with reference to the time that you
11 worked at Good Samaritan, as far as the emergency
12 department is concerned, can you describe to the jury
13 sort of what does the emergency department at Good
14 Samaritan look like as far as staff, bedding, sort of
15 layout? Can you describe that for the jury?

16 A Sure. So at the time and currently, there is
17 36 treatment rooms in the main ER, a lot of hallway
18 stretchers, as well. There's also an Express Care kind
19 of area. But, for the purposes of this conversation,
20 36 beds in the main ER. Staffing-wise, there would be
21 anywhere between four to five and 12 nurses.

22 And, for the purposes of this discussion,
23 there would be -- it would have been two docs on and
24 probably one either nurse practitioner or physician
25 assistant in the morning.

1 Q And, as far as the morning, what I'm going to
2 turn your attention to is the morning of January 29th,
3 2022. Were you working at the Good Samaritan on that
4 day?

5 A If that's the morning of this incident, then
6 yes.

7 Q Is there a particular shift or what kind of
8 hours would you be working around that time at Good
9 Samaritan?

10 A I'm pretty sure I started my shift at 6:00
11 a.m. that day. There was a 6:00 a.m. to 2:00 p.m. --
12 it was either two or three -- excuse me. It was either
13 6:00 to 2:00 or 6:00 to 3:00 p.m. But the shift would
14 have started at 6:00 a.m., as I recall.

15 Q And, on that day at good Samaritan, do you
16 recall becoming involved with treatment of a patient by
17 the name of John O'Keefe?

18 A Yes.

19 MR. LALLY: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 BY MR. LALLY:

23 Q I am showing you a document. If you could
24 just take a look at that and look when you're finished?

25 A Do you want me to look through each page or

1 just acknowledge that --

2 Q Just as far as do you recognize what that
3 document is?

4 A Yes, of course.

5 Q And what do you recognize that to be?

6 A So it looks like, is a transcription or a copy
7 of the medical chart that I would have produced or
8 dictated. And on the front page is also it's called
9 like a code sheet which the nurses would have put
10 together and I would have signed off on, detailing what
11 resuscitative efforts, as in the specific details and
12 timing of the resuscitative efforts that were performed
13 on Mr. O'Keefe's behalf.

14 MR. LALLY: Your Honor, with the Court's
15 permission, may the witness hold on to that during
16 the course of his testimony?

17 THE COURT: Yes.

18 MR. LALLY: And, Your Honor, what I would seek
19 to introduce and admit as the next exhibit would be
20 a redacted copy of those same records.

21 THE COURT: Is there any objection?

22 MS. LITTLE: Your Honor, if we could just
23 review those?

24 Your Honor, if we could approach?

25 THE COURT: You may.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: All right. Just so it's clear,
4 you've had this in discovery for a long time,
5 correct?

6 MS. LITTLE: Yes, redacted. It looks like
7 there's narratives that are included that weren't
8 redacted, which is rank hearsay.

9 THE COURT: What do you say, Mr. Lally?

10 MR. LALLY: I think it goes to the medical
11 diagnosis and treatment of the information he was
12 provided.

13 THE COURT: I can't hear you.

14 MR. LALLY: Sorry. I think it goes to the
15 medical diagnosis and treatment of the information
16 that he was provided in the course of treatment of
17 this patient.

18 THE COURT: All right. So he relied on that
19 to treat the patient?

20 MR. LALLY: I think what counsel is referring
21 to is there are reports via EMS as far as what they
22 had reported. And all of those witnesses also
23 testified.

24 MS. LITTLE: There's hearsay statements of EMS
25 reporting what other people told them.

1 THE COURT: All right. Did you intend to
2 publish this in some form?

3 MR. LALLY: No.

4 THE COURT: Then let's deal with this later
5 and get some testimony going. Okay?

6 MR. LALLY: Sure.

7 THE COURT: So I will mark the redacted copy
8 for identification because if you get to put it in,
9 this is what they will be what they put in. I need
10 to look at it and I don't want to do that now.

11 MR. LALLY: Sure.

12 THE COURT: All right. So for identification,
13 please.

14 THE COURT: Mr. Lally, I'll let you hold onto
15 what has been marked as "SS" for Identification.
16 (Whereupon, redacted Good Samaritan medical records
17 of John O'Keefe were entered and marked Exhibit
18 "SS" for Identification.)

19 BY MR. LALLY:

20 Q Now, Dr. Rice, with regard to Mr. O'Keefe,
21 about what time did he come into your facility at Good
22 Samaritan?

23 A Would you like me to look at the chart here?

24 THE COURT: If you can't remember things and
25 you need to reference the chart, you can do that,

1 Doctor.

2 THE WITNESS: Okay. Thanks.

3 So it looks like, based on the code sheet, the
4 first line starting at 06:47, so I'll say 6:47 a.m.

5 BY MR. LALLY:

6 Q And, as far as his presentation, Mr. O'Keefe's
7 presentation when he came into the emergency
8 department, how would you describe his presentation
9 upon his arrival there?

10 A So he would have been or he was unresponsive
11 and intubated, as in with a breathing tube into his
12 airway via his mouth.

13 Q And, as he came into the emergency department,
14 what, if anything was affixed in regard to CPR or other
15 resuscitative efforts?

16 A So he would have had or had CPR in progress
17 and also someone would have been ventilating him, his
18 lungs, via the endotracheal tube.

19 Q Now, there is mentioned within that record as
20 far as cardiac arrest; is that correct?

21 A I don't know. I'm sorry. I don't understand
22 what you're asking me.

23 Q Sure. Well, let me just ask you, are you
24 familiar with the term "cardiac arrest"?

25 A Yes.

1 Q Can you describe to the jury based on your
2 training and experience what your understanding of that
3 term is?

4 A Sure. So as in he arrived in cardiac arrest,
5 which, by definition, means that his heart was
6 autonomously or independently pumping blood or, in his
7 case, without electrical activity, as well, of the
8 heart.

9 Q And are you familiar with another term called
10 perfusion?

11 A Yes.

12 Q And can you explain what perfusion is and how
13 that relates to the condition of cardiac arrest?

14 A Sure. For example, you and I right now,
15 because our heart is autonomously, you know, pumping
16 blood, the heart is the pump and responsible for
17 pushing blood throughout your body, therefore,
18 perfusing your body.

19 In a scenario like this where a patient is in
20 cardiac arrest or asystole, as in not having any
21 electrical activity in his heart, mechanical activity
22 of his heart, the perfusion that is happening is by
23 CPR, as in the chest being pushed upon, indirectly, we
24 call it, maybe indirectly pumping or moving blood flow
25 so there is perfusion but in a -- significantly limited

1 compared to someone not in cardiac arrest.

2 Q And, as far as that perfusion process is
3 concerned, what, if any, relation does that have to the
4 organs within the body?

5 A Well, so, you know, if your perfusion is
6 limited, then your organs are not getting the normal
7 amount of blood flow and, therefore, oxygen and all the
8 other, you know, nutrients that your blood is
9 providing. So your organs will begin the process of
10 failure.

11 Q And you used the term in there as far as
12 "asystole." Could you explain to the jury what you
13 understand that term to mean?

14 A Sure. So asystole would be when you put the
15 electrical leads on a patient's heart. The complete
16 absence of intrinsic electrical activity from the heart
17 would be asystole, so as in not having any observable
18 or detectable electrical activity would be asystole.

19 Q Now, as far as these conditions as far as
20 cardiac arrest and asystole, what, if any, concerns
21 does that raise from a diagnostic perspective in
22 relation to Mr. O'Keefe?

23 A I guess your question with respect from a
24 diagnostic perspective, I don't know exactly what
25 you're asking me there.

1 Q Sure. Let me rephrase that.

2 So with regard to those conditions that are
3 observed and noted within the medical chart for
4 Mr. O'Keefe that you have before you, how would that
5 relate to his condition or sort of how he's presenting
6 and what, if anything, you're doing treatment-wise?

7 A Well, so even with good CPR, the perfusion of
8 the brain, for example, and this is what I think about
9 frequently during resuscitative efforts like this, as
10 in I couldn't tell you an exact time, but there is a
11 certain -- without perfusion of the brain for a certain
12 amount of time, you're limited with respect to -- the
13 concern is that the patient, even if you resuscitate
14 their body, that there is potentially going to be brain
15 death or anoxia or lack of oxygen to the brain and a
16 poor outcome with respect to neurological outcome.

17 Q Now, as far as the resuscitative efforts or
18 concern, is there any sort of standard sort of
19 resuscitative protocols that would be undergone with
20 someone who presents as Mr. O'Keefe did?

21 A Yes.

22 Q And can you explain what those are?

23 A So you know, in broad terms, there is ACLS,
24 which is advanced cardiac life support. That is an
25 algorithm that through medical training, you know, I

1 have learned is frequently -- the algorithm can be
2 adjusted. There is also ATLS for trauma patients. So
3 there is an algorithm there with respect to
4 resuscitation or guidelines, I guess, with respect to
5 resuscitation.

6 Q And, within those sort of guidelines or
7 protocols, are you familiar with a medication called
8 epinephrine?

9 A Yes.

10 Q And how would epinephrine play into sort of
11 the treatment or the diagnosis of Mr. O'Keefe?

12 A So in the time that I've been practicing,
13 epinephrine is probably the only medication or drug
14 that has persistently been in the ACLS pathway. It is
15 adrenaline. So the idea is, loosely, that your
16 attempting to affect upon the heart, itself, more
17 squeeze, as in more pressure, and also to increase the
18 potential or, if there is electrical activity, to
19 increase the amplitude of that electric activity at the
20 cellular level.

21 Q Now, in addition to the cardiac arrest and the
22 asystole as far as Mr. O'Keefe was concerned, what, if
23 any, presentation did he have related to hypothermia?

24 A So I know his initial temperature was low.
25 I'd have to -- I was going to say I'd have to look, but

1 I can see here that the nursing wrote in their notes
2 that his ICT equals 80.1R. So I interpret that to be
3 his temperature was 80.1 degrees by rectal temperature.

4 Q And, if you could explain to the jury sort of
5 your understanding as far as hypothermia? What is it
6 and how does that present itself?

7 A So, you know, as it pertains to this case,
8 there is a few ways to get hypothermic. If I, at
9 12:20, were to have a cardiac arrest right now and stop
10 perfusing, my current temperature -- you know, my
11 current temperature, I'm guessing, is 98.6, normal
12 temperature. Without perfusion, the body will lose --
13 excuse me. The core temperature will decrease over
14 time. The specifics of that, I could not -- are beyond
15 my knowledge and training. But that's the -- does that
16 answer your question?

17 A Yes.

18 Q And so as far as hypothermia is concerned, is
19 there a certain sort of baseline or what is sort of the
20 typical temperature under which someone would be
21 declared hypothermic or treated as such?

22 A I don't know if I could give you a definition
23 of medically what a, quote, "diagnosis" of hypothermia
24 -- I couldn't tell you a number. I can tell you that
25 80 qualifies as hypothermia, but I couldn't tell you a

1 number under which that definition applies.

2 Q But the temperature that Mr. O'Keefe presented
3 with certainly fits within those parameters; is that
4 correct?

5 A Yes. Eighty degrees is very cold.

6 Q And, as far as resuscitative efforts as they
7 pertain to the core body temperature, the low core body
8 temperature of Mr. O'Keefe, what, if anything, was done
9 with relation to treatment of that?

10 A Sure. So as the nursing note mentions, a Bear
11 Hugger was applied. So that's a blanket that has
12 warmed air being pumped through it. So that is a way
13 of externally warming someone.

14 He also -- having reviewed the chart earlier,
15 and I don't see it right in front of me -- actually, I
16 take that back. He had warm IV fluids running. So IV
17 fluids not at room temperature, as in in a warmer or
18 oven of sorts, would have been given to him via
19 intravenous or central venous access.

20 Q And, as far as the body temperature is
21 concerned, what, if any, relationship does the body
22 temperature have and the warming process have as to a
23 declaration of deceased in relation to Mr. O'Keefe?

24 A So there's a goal in resuscitative medicine to
25 attempt to rewarm a body, loosely, the idea being that

1 the heart, among other organs, will function better or
2 function at all in a warmer environment. That is one
3 goal of resuscitation.

4 With him, as I recall, despite, you know,
5 resuscitative efforts for approximately half an hour,
6 there was not a significant warming of his core
7 temperature.

8 Q And so, sir, with reference to Mr. O'Keefe, at
9 some point was he pronounced deceased by yourself?

10 A Yes.

11 Q And do you see any indication within the chart
12 as to what time that was?

13 A Sure. One moment here. According to my note,
14 it looks like the time of death was, or death
15 declaration was 7:50. 7:50 in the morning.

16 Q Now, as far as the observations that you made
17 as far as asystole and the cardiac arrest, did that
18 persist throughout the course of your treatment of
19 Mr. O'Keefe?

20 A Yes.

21 MR. LALLY: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Directing your attention to the fourth page

1 in, the bottom of it says, 2:04. And I direct your
2 attention to the top of that page. Do you see that,
3 sir?

4 A Yes.

5 Q And, as far as the -- this is sort of a
6 listing of observations or -- well, let me ask you.
7 Can you describe what is listed at the top of that page
8 there?

9 A Sure. So this would have been the physical
10 exam documentation of my note. So with respect to the
11 head, it says -- excuse me. The first word is "other,"
12 which I believe is a function of the computer system as
13 in I typed "right superior orbital ridge region,
14 approximately 7mm laceration," and then "with
15 surrounding soft-tissue swelling/contusion."

16 Q And, sir, if I could just stop you there. As
17 far as what you are talking about with the right
18 superior orbital ridge region, could you explain to the
19 jury or demonstrate for the jury where that is?

20 A Sure. So the orbital ridge is the bone above
21 your eye like where your eyebrow is or, you know, would
22 normally be.

23 Q And, as far as the other sort of things that
24 you noted over the course of your physical exam or
25 review of Mr. O'Keefe, what, if anything else of note

1 did you observe?

2 A According to my note, the only observations
3 other than -- would be that he had breath sounds
4 present bilaterally. He also -- I observed that he was
5 pulseless. His abdominal exam was atraumatic on my
6 chart. And then extremity exam or musculoskeletal
7 exam, I wrote that he had superficial abrasions on the
8 right forearm.

9 Q And, from a medical perspective, when you use
10 that term "abrasion," can you explain for the jury what
11 you understand the term "abrasions" to mean?

12 A Yes. I use it as a medical synonym for
13 scratches, if you will.

14 Q And, under neuro or neurological, there is a
15 listing as far as a GC3; is that correct?

16 A Yes.

17 Q And can you explain what that is and what that
18 means?

19 A So GC is what I charted -- I tended to write.
20 The GCS is a Glasgow coma scale, which is a scoring
21 system to identify someone's level of consciousness or
22 unresponsiveness.

23 Q And, as far as the three, like, where does the
24 scale start? Where does it go to and where does the
25 three fit in?

1 A So there's three components: verbal function,
2 motor function and eye or ocular function. Someone
3 who's completely unresponsive, as in no motor, no
4 verbal and no eye movement or function, completely
5 unresponsive, the lowest you can get on the scale is
6 three.

7 Q Thank you, sir.

8 MR. LALLY: Your Honor, may I approach just to
9 retrieve?

10 THE COURT: Yes.

11 BY MR. LALLY:

12 Q Later on over the course of that same morning,
13 did you have occasion to become involved in the
14 treatment of another patient by the name of Karen Read?

15 A Yes.

16 MR. LALLY: May I approach the witness again,
17 Your Honor?

18 THE COURT: Yes.

19 BY MR. LALLY:

20 Q Sir, I'm showing you another document. I'd
21 just ask you to look at that to the extent that you can
22 recognize it and look up whenever you finish.

23 A (Whereupon, the witness complies.)

24 Q And, in general, sir, do you recognize what
25 that is?

1 A Yes.

2 Q What do you recognize it to be?

3 A The first part I recognize would have been
4 the medical record or medical note with respect to
5 Ms. Read, who was also a patient that morning.

6 Q Thank you.

7 MR. LALLY: Your Honor, the Commonwealth would
8 seek to introduce and admit as the next exhibit a
9 redacted copy of those records.

10 MS. LITTLE: Your Honor, no objection, subject
11 to the redactions. We can discuss that later.

12 THE COURT REPORTER: This will be Exhibit 106,
13 Your Honor.

14 THE COURT: Thank you.

15 (Whereupon, redacted Good Samaritan Hospital
16 medical records for Karen Read were entered and
17 marked Exhibit No. 106 in Evidence.)

18 BY MR. LALLY:

19 Q Now, sir, if you know, about what time was it
20 that Ms. Read came into the emergency department at
21 Good Samaritan that morning?

22 A I mean, I can tell you from this chart it
23 looks like that her, at least the first posted vital
24 signs, were from 7:51, 5-1, in the morning.

25 Q And, in reference to Ms. Read, what is it that

1 she came into Good Samaritan in regard to? Why was she
2 there?

3 A I'd have to review Daisy's notes.

4 Q Well, let me ask you this, sir. Was it in
5 reference to a Section 12, if you recall?

6 A Yes.

7 Q Okay. And, with regard to Section 12,
8 patients that come in in regard to that, what kind of
9 involvement do you have or who, if anyone, do you work
10 with in regard to those types of patients?

11 A Sure. So Section 12 I would define as an
12 involuntary detention of a person usually for a mental
13 health concern. Whether that's self harm or harm to
14 others or if someone who's, you know, afflicted with
15 schizophrenia or psychosis, members of the public can
16 bring someone, or the police or members of the public
17 can bring someone, to the hospital on a Section 12,
18 which, again, involuntarily detains them for
19 evaluation.

20 Q And, in addition to yourself, is there other
21 staff, you mentioned that there were physicians
22 assistants or nurses that were working, what -- how
23 much involvement would you typically have with someone
24 who comes in on that kind of prognosis or diagnosis?

25 A I would say, to answer your question, my

1 involvement is variable and dependent a lot of times on
2 what that nurse practitioner or physician assistant
3 feels like they need or want my involvement to be.

4 Q And what kind of involvement would you have as
5 far as when someone comes in with that kind of issue?
6 What is sort of a typical protocol or policies that the
7 Good Samaritan would undergo with reference to that
8 patient? What are you doing with reference to the
9 patient when they arrive?

10 A I'm sorry. I don't really understand what the
11 question is.

12 Q No. Understood. Let me rephrase it.
13 So with regard to a patient coming in on a
14 Section 12, what happens with that person once they
15 present in the ER?

16 A So whether they're evaluated by me or a nurse
17 practitioner or a physician assistant, if that person
18 feels like, based on their evaluation, that they need a
19 mental health consult or evaluation, then they would
20 have that initiated as well as what we do for a lot of
21 patients or all patients, vital signs and sometimes
22 blood work, as well.

23 Q And, when it comes to that sort of blood work
24 or assay as far as what's being done with someone who
25 comes in with that kind of report, what is sort of

1 being tested and what is being looked at as far as the
2 blood work is concerned?

3 A Well, there's a few reasons to get blood work.
4 But, in general, part of the evaluation is, you know,
5 with respect to the medical presentation to make sure
6 there's no medical emergencies present, in addition to
7 whatever the mental health concern may be. There is
8 also blood withdrawn with respect to disposition as far
9 as some people. For example, it would be appropriate
10 to have a mental health evaluation if, for example, I
11 were intoxicated on alcohol and my alcohol level were
12 elevated because I think the idea is that, you know,
13 you're not getting a true representation maybe of
14 what's going on.

15 Q So am I correct in that someone presents and
16 then there is like sort of you medically clean that
17 person as far as any sort of injuries or anything like
18 that first?

19 A I wouldn't say first necessarily. I think a
20 lot of times these processes happen in parallel.

21 Q So in parallel you have the medical clearance
22 and then sort of a psychological clearance, as well?

23 A Sometimes, yes.

24 Q And then sort of psychological clearance, as
25 well?

1 A Sometimes, yes.

2 Q And then sort of involved in both of those,
3 there would be blood drawn in reference to a Section 12
4 as far as a typical one would be looking for sort of
5 alcohol and drugs of abuse, things of that nature?

6 A I am hesitant to answer "yes" because of the
7 word "typical." I wouldn't say there's really a
8 typical presentation with respect to mental health
9 presentations in the ER.

10 Q And, from your memory and/or your view of the
11 chart, was that done as far as the blood work done with
12 regard to Ms. Read on this day?

13 A Are you asking me if blood work was drawn?

14 Q Yes.

15 A I believe so. I'd have to double check.

16 So yes. It looks like there was blood work
17 drawn.

18 Q And, among the things that were tested within
19 the facility within Good Samaritan was an alcohol
20 screen; is that correct?

21 A Yes.

22 Q And what is the result of that alcohol screen
23 as contained within those records?

24 MR. LALLY: Objection, Your Honor.

25 THE COURT: I'll allow it.

1 THE WITNESS: Do I answer it or no?

2 THE COURT: Yes.

3 THE WITNESS: So it looks like 93, 9-3. I'd
4 have to maybe look deeper in the chart to tell you
5 the units of that measurement. I don't want to
6 guess. But, to answer your question, 93.

7 MR. LALLY: May I approach just briefly, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q Sir, directing your attention to a previously
12 tabbed portion of that and direct you to about the
13 middle of the page here. Do you see the units that 93
14 pertains to contained within that record, sir?

15 A Yes. So it looks like it's milligrams per
16 deciliter.

17 Q Thank you, sir.

18 MR. LALLY: May I approach just to retrieve,
19 Your Honor?

20 THE COURT: Yes.

21 MR. LALLY: Thank you, sir. I have no further
22 questions of this witness, Your Honor.

23 THE COURT: Ms. Little?

24 MS. LITTLE: Thank you.

25 CROSS-EXAMINATION

1 BY MS. LITTLE:

2 Q Good afternoon.

3 A Hi.

4 Q You testified that you treated Ms. Read when
5 she arrived at the hospital on January 29th, correct?

6 A I don't know if I testified that I treated
7 her, but I was involved in her care, yes.

8 Q You actually wrote the reports regarding her
9 care, correct?

10 A That is not correct.

11 Q Would it refresh your recollection to take a
12 look at your report?

13 A The report -- I believe that we're talking
14 about the emergency room note that was written by a
15 nurse practitioner.

16 Q Would it refresh your recollection to take a
17 look at some additional reports from January 29th?

18 A It sounds like you want to show me some
19 reports. So sure.

20 Q Thank you.

21 MS. LITTLE: May I approach?

22 THE COURT: Yes.

23 BY MS. LITTLE:

24 Q If you could take a look.

25 A Okay.

1 Q Is your recollection refreshed? Do you recall
2 treating Ms. Read on January 29th?

3 A I do not.

4 Q Do you recall writing a report that has your
5 name, Justine Rice, on it from January 29th?

6 A It depends on what you define a report as. To
7 best answer your -- well, do I recall writing this
8 note? No. Is that what your question was?

9 Q So is it your testimony that you -- do you
10 recall treating Ms. Read at all?

11 A No, I don't.

12 Q Do you recall actually ordering her blood in
13 this case?

14 A No.

15 Q Do you recall sending it out to the labs at
16 all?

17 A No.

18 Q As you sit here today, you don't know who
19 collected the blood?

20 A That's correct.

21 Q You don't know who packaged the blood?

22 A That would also be a fair assessment, yes.

23 Q And you don't know who submitted that to the
24 lab?

25 A Correct.

1 Q It wasn't you, correct?

2 A I can confidently say that I did not, like,
3 collect blood work. Yeah. I did not do that.

4 Q Okay. You testified that you treated
5 Mr. O'Keefe upon arrival on January 29th, correct?

6 A Yes.

7 Q Did a firefighter ever approach you on the
8 morning of January 29th and tell you that he had
9 information suggesting that the victim had been struck
10 by a vehicle?

11 MR. LALLY: Objection.

12 THE COURT: Do you remember that?

13 THE WITNESS: I do not.

14 BY MS. LITTLE:

15 Q So if a firefighter indicated that he informed
16 you that information suggesting that Mr. O'Keefe had
17 been in some sort of vehicular accident, that's
18 something that you would have included in your report,
19 correct?

20 A I don't know if that's a fair assumption.

21 Q But, as you sit here today, you have no
22 recollection whatsoever of anyone telling you that the
23 victim had appeared to be in some sort of car accident,
24 correct?

25 A Well, I think -- I don't have it in front of

1 me, but I think my note that I prepared for Mr. O'Keefe
2 states that --

3 THE COURT REPORTER: One moment, please.

4 THE COURT: I don't think he finished his
5 answer.

6 THE WITNESS: So I think what I was trying to
7 say was that on my note it says "per EMS report."
8 So one of the medics, as in one of the folks on the
9 ambulance who brought Mr. O'Keefe in. Again, I'm
10 not right in front of my note. But, as I recall,
11 it said something to the effect of per EMS report,
12 the patient may have been struck by a vehicle.

13 Q Can I show you a copy of that report?

14 A Please.

15 MS. LITTLE: May I approach?

16 THE COURT: Yes.

17 BY MS. LITTLE:

18 Q If you could take a look at that?

19 A All right. So --

20 Q I'll ask the question.

21 A Of course.

22 Q Is your recollection refreshed?

23 A Yes.

24 Q Is there anywhere on that report that says
25 that the patient came in and there was a statement by

1 EMS that the patient appeared to have been struck by a
2 vehicle?

3 A Just give me a moment to read through the --

4 Q Sure.

5 A So no, there is not.

6 Q In fact, there is no mention of a vehicle
7 whatsoever, correct?

8 A That's correct.

9 Q Dr. Rice, did you observe Mr. O'Keefe's
10 injuries when he arrived at the hospital that morning?

11 A I guess you'd have to define what "observe
12 injuries" means.

13 Q Well, during the course of your treatment, did
14 you inspect him for injuries?

15 A Yes.

16 Q You testified that you observed certain
17 abrasions and scratches on his right arm, correct?

18 A Yes.

19 Q Aside from his injuries to his right arm and I
20 believe you described the laceration above his eye --

21 A Uh-huh.

22 Q -- John O'Keefe did not have a single other
23 injury on his body from the neck down, correct?

24 A I don't know if that's fair to say.

25 Q Well, you didn't report a single injury to his

1 shoulders, correct?

2 A Correct.

3 Q You did not report a single injury to his
4 chest, correct?

5 A Correct.

6 Q You did not report a single injury to his
7 torso, correct?

8 A Correct.

9 Q You did not report a single injury to his
10 back, correct?

11 A Correct.

12 Q You also did not report a single injury to his
13 ribs, correct?

14 A Correct.

15 Q No injury to his hips, right?

16 A Correct.

17 Q You observed no injury to his knees, correct?

18 A I reported no injuries to his knees, correct.

19 Q No injuries to his shins, correct?

20 A Correct.

21 Q No injuries to his ankles, right?

22 A Correct.

23 Q And no injuries to his feet?

24 A Correct.

25 Q From the neck down, he did not have a single

1 broken bone, right?

2 A I don't know if that's a fair assessment of
3 the statement.

4 Q You certainly didn't notate in your report
5 that he had any broken bones from the neck down,
6 correct?

7 A No, I did not. I'm happy to explain that.
8 But, to answer your question, no, I did not.

9 Q You did not report a single fracture from the
10 neck down, correct?

11 A I did not report a single fracture. Correct.

12 Q But injuries that you testified to today were
13 that he had sort of a laceration above his eyelid,
14 correct?

15 A The injuries that I testified to today,
16 correct. Yes.

17 Q And the scratches on his right arm?

18 A On the right forearm, yes.

19 MS. LITTLE: No further questions.

20 THE COURT: Okay. Mr. Lally?

21 REDIRECT EXAMINATION

22 BY MR. LALLY:

23 Q Dr. Rice, with reference to fractures or
24 broken bones, can you explain sort of why that may not
25 have been noted or why that wasn't included within the

1 chart?

2 A Sure. I'd like to. So with a patient like
3 Mr. O'Keefe who came in, the focus of myself and the
4 team of physician assistants and nurse practitioners
5 and nurses, whoever was helping in a case like this,
6 the focus is in core resuscitative medicine of securing
7 an airway, making sure he has a breathing tube in,
8 making sure CPR is being applied with the right
9 pressure to the right place, making sure that the core
10 resuscitative elements of medicine are happening and
11 less as in the mind can only focus on so much.

12 So I think in cases like this, because the
13 attention is on resuscitation of someone's heartbeat,
14 their life, there is less focus on injuries or
15 observations that don't coincide with the resuscitation
16 effort or not pertinent to that resuscitative effort,
17 if that answers your question.

18 Q And so in that vein, it's not like you're
19 doing x-rays or full skeletal survey or something like
20 that?

21 A No. We're not doing a full skeletal survey.
22 No.

23 Q Because you're more concerned with the fact
24 that his body core temperature is 80, his heart isn't
25 pumping blood and he is pulseless, correct?

1 A Correct, unless there was an extremity injury
2 that would be pertinent to his resuscitation if he had
3 had a traumatic amputation, as in removal of a leg, for
4 example. That would be pertinent to a resuscitation.
5 But an otherwise intact extremity, you know, that is
6 not necessarily within the realm of resuscitation.

7 MR. LALLY: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q Doctor, I direct your attention to the
12 document which indicates "Discharge and Clinical
13 Impression." If you could just read from that and look
14 up when you've finished? Read it to yourself.

15 A (Witness complies.) Would you like me to read
16 it out loud?

17 Q So as far as the chart is concerned, as far as
18 your clinical impression of Mr. O'Keefe, can you read
19 sort of what you --

20 A Right. So I wrote (as read), "Clinical
21 Impression: Cardiac arrest, head trauma, exposure to
22 environmental cold."

23 MR. LALLY: May I approach just to retrieve,
24 Your Honor?

25 THE COURT: Yes.

1 MR. LALLY: Thank you. No further questions.

2 THE COURT: Anything further, Ms. Little?

3 MS. LITTLE: No further questions.

4 THE COURT: All right. Thank you, Doctor.
5 You are also excused.

6 THE WITNESS: Thank you.

7 (Whereupon, the witness is excused.)

8 THE COURT: So rather than -- where it's 10
9 minutes of 1:00, jurors, can we do an abbreviated
10 lunch today so we can get as much testimony in as
11 possible? So it's 10 minutes of 1:00. Why don't
12 we come back here at 1:30. And can we go until
13 4:30 today? All right. People seem to say "yes."
14 If that changes, just let Officer Delano or Officer
15 Lydon know. Thank you.

16 So we'll see you back here at 1:30.

17 (Whereupon, the jury is escorted from the courtroom
18 for the luncheon recess.)

19 THE COURT: All right. So as far as the
20 redactions that you think should be there,
21 Ms. Little, and you perhaps don't, Mr. Lally, I
22 don't know if the testimony opened the door any on
23 some of what may or may not have been there. I
24 don't have it in front of me. I haven't seen it.

25 So the two of you talk. And, if you're not in

1 agreement, I would like a copy of both by 1:15 so I
2 can decide it before it goes in. And then it would
3 be the next exhibit either with or without the
4 additional redactions. Okay?

5 MS. LITTLE: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 (Whereupon, there was a luncheon recess taken.)
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A F T E R N O O N S E S S I O N

(Court resumes.)

(Defendant present. Jury present.)

THE COURT: Your next witness, Mr. Lally?

MR. LALLY: Yes, Your Honor. The Commonwealth
calls Dr. Garrey Faller to the stand.

Whereupon,

GARREY FALLER, M.D.

having been first duly sworn, was examined and
testified under oath as follows:

THE COURT: Whenever you're ready, Mr. Lally.

DIRECT EXAMINATION

BY MR. LALLY:

Q Good afternoon, sir.

A Good afternoon.

Q Could you please state your name and spell
your last name for the record?

A Garrey Faller, F, as in Frank, A-L-L-E-R.

Q And, sir, that microphone in front of you, you
can move that any way you wish. So if you want to
bring it up or down, just the wand, itself.

And what do you do for work, sir?

A I'm a pathologist.

Q And where is it that you work?

A I work at Good Samaritan Medical Center.

1 Q And how long have you been working as a
2 pathologist at Good Samaritan?

3 A Since November of 2015.

4 Q Now, if I could ask you just a few questions
5 about sort of your educational background, starting
6 with your undergrad. Where did you go to school and
7 what, if anything, did you receive a degree in?

8 A My undergraduate education, I went to Tufts
9 University.

10 THE COURT: Doctor, I'm going to ask you to
11 put the microphone perhaps underneath your mouth
12 and speak into it because in order to keep this
13 room cool, we need to have these fans going. If
14 they can't compete with you, we'll have to turn
15 them off. So please speak loudly.

16 THE WITNESS: How am I now? Okay?

17 BY MR. LALLY:

18 Q Perfect.

19 A Okay. So Tufts University undergraduate with
20 a degree in biology.

21 Q And, after you received your degree in biology
22 from Tufts, where did you go from there?

23 A I went to Tufts Medical School in Boston for
24 four years.

25 Q And, after you graduated from medical school,

1 where did you go from there?

2 A I went to a residency in pathology, anatomic
3 and clinical pathology, at Tufts Medical Center. So I
4 stayed within the Tufts system.

5 Q And how long was that residency?

6 A That residence, at the time, a pathology
7 residency was five years. It's now four years, I
8 believe; but it's a five-year program. I finished the
9 residency with a chief resident in pathology.

10 Q And then, following your residency, where did
11 you go for work from there?

12 A In 1996, I finished residency, and my first
13 job was at Carney Hospital beginning the end of June of
14 1996.

15 Q And how long did you work at the Carney?

16 A I am still on medical staff at Carney. So
17 ever since I was transferred to help Good Samaritan
18 Medical Center in 2015. My full-time job is at Good
19 Samaritan now since 2015. But I still cover Carney
20 every now and then.

21 Q And are you board certified?

22 A I am board certified in both anatomic and
23 clinical pathology.

24 Q Now, you've used that term and just if you
25 could explain to the jury what your understanding of

1 that term is as far as pathology and sort of the
2 difference between anatomic pathology and clinical
3 pathology.

4 Q Sure. Pathology, there are two
5 subspecialties, I guess, in pathology. One is anatomic
6 pathology, which is basically if you, as a patient, go
7 to a hospital or have a biopsy, a tissue biopsy, or
8 excision or anything like that, it comes to the
9 pathology department. And an anatomic pathologist is
10 responsible for making the diagnosis for that patient.
11 So we abbreviate that as an AP, anatomic pathologist.

12 So in residency, you can also train to become
13 a clinical pathologist. A clinical pathologist is a
14 pathologist who basically deals with -- to put it
15 simply, if you have a blood test, that gets sent to the
16 lab. We are essentially responsible for the quality
17 and the safety of that blood test to help ensure the
18 lab tests that are done on the specimens are accurate.

19 Q Now, with regard to your position at Good
20 Samaritan, what is it that you do at Good Samaritan?
21 What are sort of your duties and responsibilities in
22 relation to that hospital?

23 A I am the chief of pathology at Good Samaritan
24 Medical Center. I'm also the laboratory medical
25 director. So my job at Good Samaritan is to ensure,

1 you know, quality of both the anatomic pathology side
2 of things as well as the clinical pathology side of
3 things. Ultimately, my job is to help ensure that any
4 laboratory report coming from Good Samaritan is
5 accurate.

6 Q Now, the lab at Good Samaritan where the
7 testing is done, is that accredited?

8 A Yes, it is.

9 Q And can you explain to the jury sort of what
10 that accreditation means, who it's by and sort of what
11 goes into that accreditation process?

12 A We are accredited by the College of American
13 Pathologists. We abbreviate that as CAP, if I mention
14 that later, just so you know. And the accreditation
15 process, the CAP, has been in business for 75 years or
16 so. And they, according to their website, are the
17 preeminent accrediting body for medical laboratories.

18 So what that means is every two years we have
19 an in-depth laboratory survey. That's every two years.
20 And there are over maybe 3,000 elements, checklist
21 requirements that the CAP will look at in our lab which
22 ranges from anywhere for quality, quality control,
23 making sure that we have enough staff members. Just
24 about anything that can affect a laboratory result,
25 there is essentially a checklist requirement that we

1 need to fulfill and pass. So that's every two years.

2 Q And that accreditation, is that up to date as
3 of now?

4 A Yes, it is. We will be having another
5 inspection. Our window opens in July. So it's coming
6 up. We have a three-month window where the CAP can
7 come any time unannounced.

8 Q And was that accreditation up to date prior to
9 January 29th, 2022?

10 A Yes.

11 Q Now, as far as the clinical portion of the
12 lab, what are some of the things that get tested as far
13 as -- what are some of the things that are tested for
14 in the lab as far as blood work is concerned?

15 A Many different things. As probably all of you
16 know, when you go to a hospital or you have your blood
17 tested and the physician is looking for different tests
18 such as like sodium or potassium or chloride, some
19 basic tests that if they show abnormality, it could
20 help them, the clinician, make a diagnosis on you.

21 So the most common things would be like a
22 glucose, sodium, potassium chloride. Stuff like that.

23 Q Now, is there some sort of standard algorithm
24 for things that are tested or does it sort of depend --
25 dependent on the patient's presentation?

1 A I think it depends on the patient's
2 presentation. There is no standard ordering test that
3 one can order. So it depends mainly on what the doctor
4 is thinking in his differential diagnosis. He will
5 order a variety of different tests. Some tests are
6 pretty standard when you go to a hospital. He might
7 order the test that I just talked about, a CBC. They
8 want to look at your complete blood count.

9 So things like that. They want to look at
10 your hemoglobin, hematocrit, maybe, sodium, potassium.
11 Those are some of the really common tests that would
12 get ordered in a hospital.

13 Q Now, as far as drugs of abuse including
14 alcohol, is that something that's dependent upon the
15 presentation of a patient to your facility?

16 A I think an alcohol test or drug of abuse test
17 is not a routine type of order or test. It all depends
18 on if the clinician or primary care physician is
19 suspecting it could be, you know, drugs of abuse or
20 alcohol on board and they need to know if so to help
21 treat the patient.

22 Q Would that also include sort of a patient that
23 presents in regard to a mental health status or a
24 Section 12, drugs of abuse? Would that be somewhat
25 standard in relation to testing or blood work that's

1 done in relation to that kind of patient?

2 A As far as Section 12, I do not know if there
3 is a standing order, a routine ordering process for a
4 patient that is admitted to Good Samaritan under
5 Section 12. So I'm not sure.

6 Q Would that be abnormal, though, as far as
7 doing a blood-drawn test for alcohol and someone
8 presenting on a Section 12?

9 A I don't think so, no.

10 Q Now, with regard to a blood draw in the Good
11 Samaritan Hospital with reference to testing for
12 alcohol specifically, what, if any, sort of policies or
13 protocols are in place in reference to that type of
14 blood draw?

15 A I think a test for blood alcohol, the
16 phlebotomist pretty much has to run through the same
17 protocol that he or she needs to follow for any type of
18 blood test except for the fact that we do not want to
19 use an alcohol swab to clean the area before the blood
20 draw.

21 In theory, if you use an alcohol swab and
22 you're testing for alcohol, then you can, in theory,
23 contaminate the blood sample with some of the residual
24 fluid of the alcohol. Some people say if you let the
25 alcohol swab dry for 30 seconds, it's not going to

1 contaminate it. But we don't go by that process. We
2 have it specifically in our policy never to use an
3 alcohol swab when an alcohol test is ordered.

4 Q Now, in that vein, Doctor, with reference to
5 Good Samaritan in the emergency department, what, if
6 any, precautions have you or your facility taken in
7 regard to those types of blood draws in testing for
8 alcohol with regard to alcohol wipes being used?

9 A My phlebotomy supervisor has removed
10 essentially all, not 100 percent but all of the alcohol
11 swabs down in the emergency room. So a phlebotomist,
12 who perhaps could forget, which they shouldn't because
13 we have competency policies for them -- so we have that
14 in place where she's removed almost all of them so
15 somebody can't mistakenly use a swab down in the
16 emergency room.

17 THE COURT: So keep your voice up again,
18 please, Doctor, especially at the end of your
19 sentences.

20 THE WITNESS: Sure.

21 THE COURT: Thank you.

22 BY MR. LALLY:

23 Q And so, Doctor, the removal of those alcohol
24 wipes from the emergency department at Good Samaritan,
25 does that predate January 29th, 2022?

1 A It's been in place for a long time. Before
2 that, you know, it was a policy that they would use
3 Betadine for swabbing. But that policy has been in
4 place for a long time before that day in 2022.

5 Q You've spoken a little bit about as far as
6 phlebotomists working within Good Samaritan. If you
7 could just explain to the jury sort of what is a
8 phlebotomist and what is it that they do?

9 A A phlebotomist is any person who is trained to
10 draw your blood when you come to a hospital. So they
11 come in. We train people to draw the blood.

12 Q And, as far as with regard to phlebotomists at
13 Good Samaritan, you mentioned that there are some
14 proficiency testing or some protocols that they have to
15 adhere to. Can you explain that a little bit more to
16 the jury as far as what is involved in those?

17 A So with anybody who works in the laboratory,
18 per CAP checklist requirements and the government's
19 requirements, there has to be competency policies and
20 assessments on anybody who works in our laboratory,
21 including phlebotomists. So any new phlebotomist, they
22 get an initial training, and there is a -- they will
23 get a training, and then they have to be assessed to
24 make sure that they know what they need to do for their
25 job, including knowledge of all policies.

1 Then, after that, after initial training, our
2 competency policy states that we need to assess them
3 again at six months. We do the same thing, make sure
4 they know what they are doing and then six months from
5 that. So that's a year from when they started working
6 for us, and then annually thereafter.

7 So CAP is -- we have all of these competency
8 policies for everyone to make sure the lab technicians
9 know what they are doing. We also have competency
10 policies for pathologists, as well. So it's all about
11 making sure the final result that comes from our lab is
12 a good quality.

13 MR. LALLY: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 BY MR. LALLY:

17 Q So I'm showing you two sets of documents. If
18 you could just look at those and then look up when
19 you're finished.

20 A (Witness complies.)

21 Q Just in general, do you recognize what those
22 are?

23 A Yes.

24 Q What do you recognize those to be?

25 A They are two of our policies that we have for

1 Good Samaritan Medical Center, one for the
2 phlebotomists, one for our laboratory technicians. The
3 first one is a patient preparation for specimen
4 collection policy, which defines our policy for drawing
5 the blood for the phlebotomist.

6 The second is an alcohol policy which is one
7 of thousands of policies that we have in the lab to
8 describe how we -- our policy for alcohol testing.
9 Every laboratory test in our hospital has a separate
10 policy.

11 Q So everything from hematocrit to sodium to
12 potassium chloride has its own policy; is that correct?

13 A Correct.

14 Q And the policy you have before you, that's for
15 alcohol testing?

16 A Correct.

17 Q And those two policies that you have before
18 you, were those policies what was in place on January
19 29th, 2022?

20 A Correct. Yes.

21 MR. LALLY: May I approach again, Your Honor?

22 THE COURT: You may.

23 MR. LALLY: The Commonwealth seeks to --

24 THE COURT REPORTER: I'm sorry. Could you
25 repeat that?

1 MR. LALLY: Sure. The Commonwealth would seek
2 to admit and introduce as the next two exhibits.

3 THE COURT: Any objection?

4 MS. LITTLE: No objection, Your Honor.

5 THE COURT: Do we have that ready for
6 evidence?

7 MR. LALLY: I don't believe so.

8 THE COURT: So these instead, Madam Court
9 Reporter, will be the next two exhibits.

10 THE COURT REPORTER: Exhibits 107 and 108.

11 THE COURT: Thank you.

12 MR. LALLY: I believe 107 is in reference to
13 the alcohol testing and 108 would be in reference
14 to the sample collection.

15 (Whereupon, documents re: alcohol were entered and
16 marked Exhibit No. 107 in Evidence.)

17 (Whereupon, document re: specimen collection was
18 entered and marked Exhibit No. 108 in Evidence.)

19 BY MR. LALLY:

20 Q I am just showing you a document as far as
21 some medical records. Are you familiar with those
22 records?

23 A Yes.

24 Q Those records are in relation to a patient
25 named Karen Read that visited the Good Samaritan on

1 January 29th, 2022 is that correct?

2 A Correct.

3 Q Now, with reference to -- may I approach
4 again, Your Honor, just to --

5 THE COURT: Yes.

6 BY MR. LALLY:

7 Q Directing your attention to a previously
8 tabbed portion of those records, do you see a result
9 for alcohol within those records?

10 THE COURT: Mr. Lally, you have to keep your
11 voice up.

12 BY MR. LALLY:

13 Q Let me say it again, sir.

14 Doctor, with reference to those records and
15 the page that I've opened up to, do you see a record in
16 regard to a lab result for alcohol testing with regard
17 to Ms. Read?

18 A Yes.

19 Q And what is it reported as, sir?

20 A It is reported at 93 milligrams per deciliter.

21 Q And is that, as far as milligrams per
22 deciliter, is that a relatively standard way of
23 reporting an alcohol result?

24 A Yes, it is, in our hospital.

25 Q Could you explain to the jury sort of

1 milligram per deciliter what that reading means as far
2 as the metric that's used there?

3 A Well, it means 93 milligrams of alcohol per
4 deciliter of the blood.

5 Q If you could, explain to the jury sort of the
6 testing process or the protocols that are in place at
7 the Good Samaritan so that the blood is drawn by the
8 phlebotomist and then what happens from there as far as
9 the testing is concerned.

10 A Okay. So in our --

11 THE COURT: Before you do that, Doctor -- we
12 might have to turn off the fans which we don't want
13 to do -- I really need you to keep your voice up so
14 that the court officer there, so that folks down
15 there can hear you.

16 THE WITNESS: So at Good Samaritan, I can go
17 through the process.

18 BY MR. LALLY:

19 Q Please.

20 A The doctor will order the test. In the
21 emergency room, we have two phlebotomists down in the
22 emergency room. That test will print out. The order
23 will print out down in the emergency room, and it will
24 print out a label for the blood too. It will print out
25 on that label the color of the blood to be ordered. It

1 will also print out what on the label, what is to be
2 tested in our lab.

3 So that order will be seen by our phlebotomist
4 in the emergency room. They will then locate the
5 patient and perform the venipuncture, the blood draw
6 and use the correct tube. They will go through their
7 process of -- the number one -- one of the most
8 important processes in testing somebody's blood is
9 accurate patient identification.

10 So within our policy, we ask the patient to
11 state his or her first and last name and date of birth.
12 We have them say it out loud to make sure we have two
13 forms of identification.

14 Once that's confirmed, there is also a
15 bracelet on the patient. So we will match it up with a
16 Good Samaritan I.D. number. So the first step is to
17 make sure we have the correct patient. So then the
18 phlebotomist has the order in front of her or him and
19 uses the correct tube. Before drawing, they have to
20 find the correct vein for the patient, which is usually
21 in the forearm, antecubital fossa area. They will find
22 that vein. They will cleanse the area with a
23 nonalcohol swab which, in this case, the order was for
24 alcohol.

25 THE COURT: Doctor, I'm sorry. I'm going to

1 stop you. I think the problem is that you are
2 saying so much and your voice is fine and then it
3 drops. It's fine and then it drops.

4 Paul, can we turn the fans off, please? It's
5 important that all of the jurors hear everything
6 you say, Doctor.

7 THE WITNESS: Yes. Sorry. I'm trying.

8 THE COURT: So speak into the microphone.

9 THE WITNESS: Okay. I'm going to bring it
10 really close and hopefully you can turn it back on
11 when I get better at this. So I'm sorry. It's
12 hot. I'm hot too.

13 So one is we make sure there is correct
14 patient identification. We use the correct tube.
15 We draw it. We don't use an alcohol swab. We use
16 one that doesn't contain alcohol in that.

17 Then the phlebotomist will then put the labels
18 on the tube or tubes in front of the patient, then
19 bring it back to his or her area, make sure they
20 sign their name, initial their name on the tube, as
21 well as the time. Then it will be put into a bag.
22 And in the emergency room, it goes through a chute
23 and goes directly to our laboratory for testing.

24 Once we get it, that's called receiving the
25 blood work. A technician, a lab tech in our lab,

1 will scan -- there is a bar code on the label --
2 will scan it, and that will document the time that
3 we received it. They will also enter, manually
4 enter, the name of the phlebotomist and the time of
5 the blood draw so we will have accurate records of
6 what we receive and the time.

7 Once that's done, it's entered into our
8 system. And then the technician will decide what
9 needs to go next. In this case of an alcohol test,
10 there is a green-top tube which has lithium
11 heparin, has an anticoagulant in it. It's to
12 prevent clotting. So we will get that tube; and,
13 once it's entered, we will centrifuge it. And that
14 is centrifuged for about 10 minutes or so, so that
15 we can separate the layers of the blood.

16 In the blood, when you first see blood, it's
17 all red. There is no separation of the elements.
18 But, within blood, there are red blood cells.
19 There are white cells or inflammatory cells, and
20 there is the liquid portion of the blood.

21 So for alcohol testing, we need to -- there is
22 an anticoagulant in it. And so we will centrifuge
23 it to separate the different layers of the blood.
24 The different layers, the red cells, will go to the
25 bottom, and the aqueous portion, or the plasma

1 portion, will go to the top. And, when we test for
2 blood alcohol in our lab, we are testing the
3 aqueous portion, the plasma portion, of the blood.
4 So that's why it's important for us to centrifuge
5 it and separate the components.

6 Once that is done -- that takes about 10
7 minutes or so, maybe a little bit longer, then that
8 tube will be brought over to our machine, which is
9 a Roche Cobas machine. And it will be put onto the
10 machine, and that machine will test for the alcohol
11 or whatever else is ordered on the patient.

12 I think I've covered everything.

13 Q Now, with regard, sir, you've used the term a
14 couple times as far as a centrifuge. Can you describe
15 to the jury sort of what that is and how that
16 instrument works?

17 A Sure. The tube that we take is a blood tube,
18 and we want to test the aqueous plasma portion of the
19 blood, and the only way to get that plasma portion, or
20 the watery solution of the blood, is we put it in the
21 centrifuge, which will spin the blood at a rapid rate,
22 something like 3300 rpms or so, which is fast. And it
23 will separate the blood into those three layers.

24 Also in the tubes that we use is a gel that
25 comes in the tube that nicely separates the red blood

1 cell component from the water or aqueous plasma
2 component that keeps those two portions of the blood
3 separate to make it easier for us to test on the
4 machine.

5 Q Now, as far as the blood testing is concerned,
6 is there a difference between sort of what's known as
7 whole blood versus serum and plasma?

8 A There is a difference. Whole blood is
9 basically the whole blood. When somebody has a test
10 drawn and if we test something on the entire blood
11 without separating it, that would be whole blood. If
12 we say we are testing on plasma or serum, we are
13 actually separating the components of the blood by the
14 centrifuge process.

15 Q Now, which of the two, as far as serum plasma
16 versus the whole blood, which would record as far as a
17 higher percentage of alcohol in the testing?

18 A Alcohol, the answer would be plasma or serum
19 would have a little bit higher blood alcohol content
20 compared to whole blood.

21 Q As far as the separation that you're talking
22 about, is there a specific area as far as the
23 separation is concerned where alcohol tends to
24 concentrate within?

25 A Yes. Alcohol tends to go more into the watery

1 or the aqueous component of the blood. So when we --
2 like serum or plasma has a 98-percent, reportedly 98-
3 percent, water component. Whole blood, if you look at
4 the whole blood overall, it has a lesser percentage.
5 You know, if you look in the literature, it can be 86
6 percent or -- there is a range.

7 So since alcohol tends to go to the watery
8 components, if you measure alcohol like we do in
9 hospitals on the serum or plasma, the value that we get
10 will always be a little bit higher than total -- you
11 know, than measuring on full blood.

12 Q Are you aware of through your training and
13 experience sort of a conversion that can be done
14 between sort of what's reported as the testing from the
15 serum plasma to a whole blood count?

16 A In the hospital, we are pretty much in the
17 business of, you know, reporting alcohol in serum or
18 plasma, and we are not in the business of, I guess, the
19 legal aspects of alcohol testing because alcohol --
20 what I understand is that the alcohol legal limit in
21 Massachusetts is 0.08 grams per deciliter. We don't
22 make any conversions in a hospital. We are not in that
23 business to do that. We just report on the serum
24 percentage or the plasma level, and we don't make any
25 attempts to do any official conversion to whole blood

1 level. If we did, we would have to validate. We'd
2 have to do many studies, and we're just not in the
3 business for that.

4 Q I understand that's not how it's reported
5 within your record or at your facility. My question is
6 are you aware of a process by which you can sort of
7 then mathematically convert from milligrams per
8 deciliter to a gram?

9 A I am aware of that. Recently, I had to read
10 about it, but up until, you know, recently, I was not
11 aware. So we're not in the business for whole blood.
12 But there is a formula. I do know about it, and there
13 is a -- if one wants to convert a serum or a plasma
14 level to a whole blood, there are formulas that
15 basically you need to -- it's a simple formula. But
16 there is varying opinions on which formula can be used.

17 Q Now, as far as this specific patient, the
18 defendant, Ms. Read, do you have any sense from the
19 chart in front of you as far as sort of the timeline of
20 when the blood was drawn to when it was tested and
21 reported and things of that nature?

22 A I think it was -- the order was 9:03 in the
23 morning. Five minutes later -- it happened pretty
24 fast. Five minutes later, the phlebotomist got the
25 labels printed and five minutes after that, they went

1 and drew it. It was very quickly. I don't have the
2 numbers in front of me. But, ultimately, it was
3 received in our lab, I think, 10 minutes after the
4 order, the blood. Very quickly. And then the final
5 result, when the alcohol level was reported in the
6 computer system, was I think 50 minutes from the time
7 of the order.

8 Q Thank you, sir.

9 MR. LALLY: May I approach to retrieve?

10 THE COURT: You may.

11 BY MR. LALLY:

12 Q And that lab result was done pursuant to the
13 testing and the policies and the protocols and
14 everything in your lab was 93 milligrams per deciliter;
15 is that correct?

16 A Correct.

17 MR. LALLY: Thank you, Doctor. I have no
18 further questions.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MS. LITTLE:

22 Q Good afternoon.

23 A Good afternoon.

24 Q You testified that, you know, hospitals are
25 not in the legal business of calculating BACs. Do you

1 recall that testimony?

2 A Yes.

3 Q And you'd agree that there are differences
4 between screening tests that are conducted at hospitals
5 and forensic tests that are done in labs, correct?

6 A Correct.

7 Q And the purpose of testing and sort of the
8 clinical setting at a hospital is to assist in the
9 quick diagnosis and treatment of a patient; is that
10 right?

11 A Yes. Correct.

12 Q And so your priorities may be different than
13 those if you are in a forensic lab where the goal is to
14 ensure accuracy and reliability at all costs, correct?

15 A I don't agree. Not correct.

16 Q Well, hospitals use serum tests to screen for
17 the presence of alcohol, correct?

18 A Correct.

19 Q And you'd agree that serum testing does not
20 measure alcohol directly, but it actually measures the
21 presence of NADH; is that right?

22 A Correct.

23 Q And NADH is the byproduct that is created when
24 the body breaks down alcohol?

25 A Correct.

1 Q And the reason hospitals use a serum test
2 rather than a whole blood test is because it's quick
3 and efficient, and you can get test results within
4 20-ish minutes? Does that sound about right?

5 A Correct.

6 Q And you'd agree that NADH, which is what serum
7 essentially tests for, can also be elevated by factors
8 other than alcohol in the blood?

9 A I'm not aware of that.

10 Q Are you familiar with any medical literature
11 that is found that NADH is created when the body has
12 elevated either lactate or LDH in the system?

13 A Correct. There are some in our policy. There
14 are some factors that can lead to falsely elevated or
15 falsely lowered serum alcohol. One is lactic acid or
16 LDH. Another one is Waldenström macroglobulinemia,
17 which is a hematological problem and other things that
18 can interfere with not just any test but lipids, high
19 levels of lipids or hemolysis or high levels of
20 bilirubin. But our machines are very sophisticated
21 now. If there are any elevations of, let's say, you
22 know, hemolysis or lipids or bilirubin, the Roche
23 machines will detect that and flag it as a possible
24 interference, or it won't even let us result the tests.

25 So with any test, there can be interferences,

1 and I'm sure there can be interferences with the
2 forensic way of testing, as well.

3 Q Sure. And there are other causes of high
4 levels of LDH and, therefore, NADH also include things
5 like trauma, muscle weakness and loss of muscle tissue
6 or abnormal tissue formation; is that correct? Have
7 you read studies about that?

8 A I haven't read those studies, no.

9 Q Would you agree that there may be other sort
10 of medical stressors or things that can't necessarily
11 be captured by the technology but that could cause
12 error in testing?

13 A I don't understand that question.

14 Q Well, you testified that there can be certain
15 errors in testing. That's something that we see
16 throughout all different types of certain scientific
17 literature which includes ethanol testing?

18 A Yes.

19 Q And there are certain sort of factors that
20 could cause a higher level of NADH that might not
21 necessarily be picked up by the machines that you use
22 at the hospital; is that correct?

23 A I am not -- I mean, if there is, it's not a
24 common phenomenon. Our methodology for doing many
25 tests are based on this NADH enzyme methodology, and we

1 have never had issues with it. I read a lot. I
2 haven't read about, you know, major faults of our
3 methodology for testing. Most hospitals, when we look
4 at -- we actually have to do proficiency testing with
5 any test that we do in a hospital.

6 So three times a year, we get sent unknown
7 levels of alcohol and five samples, to be accurate,
8 three times a year. And we are able to look at not
9 only our results and make sure they are correct, but we
10 are able to look at, you know, what other hospitals are
11 doing across the nation.

12 So when I last looked, and it's held true for
13 10 years and maybe 20 years, is that of the, I think,
14 5,000 hospitals that are testing for alcohol, it's over
15 80 percent of them are using our methodology, which is
16 the alcohol dehydrogenase and NADH. And I can't
17 imagine, you know, why -- if there were any major
18 issues with alcohol testing using that methodology, why
19 would -- you know, it wouldn't be that high of a --

20 Q Well, as you testified, the goal in a clinical
21 setting, obviously, is to test for the presence of
22 alcohol, but you're not in the business of trying to
23 sort of calculate BAC, correct?

24 A No, we don't. We don't.

25 Q And so your goals are to make sure you're

1 screening for the presence of alcohol but you're not
2 quite as concerned with the precise amount that you
3 might see in, for instance, a whole blood test in a
4 forensic lab?

5 A Well, we result in terms of in the serum. We
6 know the Massachusetts laws. And laws across the
7 nation are based on whole blood. But there are in the
8 literature formulas that you can use if, you know, it
9 were a medical legal case that one can use to convert
10 our level to a blood alcohol. We don't do it in a
11 hospital. We won't report a serum alcohol and then we
12 don't do the conversion because it's a very rare event
13 that a level will end up in court. But there are
14 forensic lab people that can provide that formula.

15 Q And, when you get a test result from a serum
16 test, that information does not establish when alcohol
17 was consumed, correct?

18 A Correct.

19 Q And so you're just looking at a specific point
20 in time to say this is what the serum test reflects at
21 9:08 a.m. on January 29th, correct?

22 A Correct.

23 MS. LITTLE: Thank you. No further questions.

24 THE COURT: All right. Mr. Lally, any
25 followup?

1 MR. LALLY: Just briefly.

2 REDIRECT EXAMINATION

3 BY MR. LALLY:

4 Q As far as the interferences or anything that
5 would lead to elevated levels from your view of
6 Ms. Read's chart, was there anything like that present
7 there?

8 A I didn't see anything, no.

9 Q Any interferences would be accounted for in
10 the sense that the machine would sort of vet them out
11 and not result or not recorded in the chart if that
12 were to occur; is that correct?

13 MS. LITTLE: Objection, Your Honor.

14 THE COURT: Form of the question. I'll
15 sustain the objection. You can ask it differently.

16 MR. LALLY: Sure.

17 BY MR. LALLY:

18 Q Dr. Faller, with regard to the interferences
19 that you were talking about, what, if any, impact would
20 that have on the results being reported?

21 A If there were the three major things that
22 could interfere with the result like high lipids,
23 hemolysis or high bilirubin, our machine would flag
24 that and we would have some information that the result
25 may not be valid and sometimes we will record a result

1 with a disclaimer or sometimes if those levels are so
2 high, we won't record it at all. But, in this case,
3 there were no flags.

4 MR. LALLY: Nothing further, Your Honor.

5 THE COURT: Anything, Ms. Little, or are you
6 all set?

7 MS. LITTLE: If I could have one moment, Your
8 Honor?

9 THE COURT: Sure.

10 (Whereupon, there was a brief pause.)

11 MS. LITTLE: All right. Just one moment, Your
12 Honor.

13 No further questions.

14 THE COURT: All right. Dr. Faller, thank you.
15 I'm sorry I gave you such a bad time about your
16 voice.

17 THE WITNESS: Okay. I'm so sorry. Thank you.

18 THE COURT: Thank you.

19 (Whereupon the witness was excused.)

20 THE COURT: Your next witness, Mr. Lally?

21 MR. LALLY: Yes, Your Honor. The Commonwealth
22 calls Mr. Nicholas Roberts to the stand.

23 Your Honor, may we approach just while the
24 witness is coming in?

25 THE COURT: Yes.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: So I just want to say that I came
4 out into the courtroom at 1:20, thinking that if
5 you hadn't figured out "SS" I would just take a
6 look at it, and it was sitting there. So I assumed
7 that was done. Why wasn't that done?

8 MS. LITTLE: I am so sorry. I thought you
9 said 2:00 o'clock. So for some reason in my brain,
10 I thought we were coming back from lunch at 2:00.
11 So it's my fault. But I do have the redactions for
12 you. They are sitting on my desk.

13 THE COURT: All right. And you're in
14 agreement with them?

15 MR. LALLY: I just need to -- I mean, I'm
16 assuming I know what they are, but I just --

17 THE COURT: All right. So this is what I try
18 to avoid.

19 MR. LALLY: I know.

20 THE COURT: All right. So what did you want
21 to come to sidebar for?

22 MR. LALLY: Your Honor, just as far as I know
23 there has been some opposition, and I was seeking a
24 ruling from the Court as far as the admissibility
25 of the results. If the Court wants, I can

1 obviously bring the phlebotomist in, but I think
2 the evidence is --

3 THE COURT: Now, do you still have an
4 objection? It sounded like you didn't really have
5 an objection.

6 MS. LITTLE: No.

7 THE COURT: Okay. So no objection. Okay. So
8 we will go forward. Just move it along.

9 MR. LALLY: Thank you, Your Honor.

10 (Whereupon, the sidebar conference concluded.)

11 Whereupon,

12 NICHOLAS ROBERTS

13 having been first duly sworn, was examined and
14 testified under oath as follows:

15 THE COURT: All right, Mr. Lally.

16 MR. LALLY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. LALLY:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q Would you please state your name and spell
22 your last name for the jury, sir?

23 A Sir, my name is Nicholas Roberts,
24 R-O-B-E-R-T-S.

25 Q And what is it that you do for work, sir?

1 A I'm currently employed with a company called
2 Thermo Fisher as a field service engineer.

3 Q And how long have you been doing that?

4 A Since November of last year.

5 Q And so prior to that or prior to November of
6 last year, 2023, where did you work before that?

7 A I was in the Massachusetts State Police Crime
8 Lab in the Toxicology Unit.

9 Q And how long did you work in the Toxicology
10 Unit at the Massachusetts State Police Crime Lab?

11 A Since October of 2014.

12 Q Now, if I could turn your attention to prior
13 to joining the lab for the Massachusetts State Police,
14 can you talk a little bit about your educational
15 background? Where did you go to school and what did
16 you go to school for?

17 A Sure. I have a Bachelor Degree in Applied
18 Forensic Science with a concentration in Chemistry and
19 Toxicology from Mercyhurst University. That's in Erie,
20 Pennsylvania. Then I also have a Master's Degree in
21 Forensic Toxicology from the University of Glasgow in
22 Scotland.

23 Q Now, after receiving your degree from the
24 University of Glasgow in Scotland, where did you go
25 from there?

1 A I returned home to the British Virgin Islands,
2 where I taught at a community college.

3 Q And what did you teach there?

4 A Mainly chemistry and a term or two of physics.

5 Q And then following your teaching in the Virgin
6 Islands, where did you go from there?

7 A I was hired at the Mass. State Police Crime
8 Lab.

9 Q Now, when you were initially hired at the
10 Mass. State Police Crime Lab, you were working
11 initially as a Forensic Scientist I; is that correct?

12 A Correct.

13 Q And can you explain to the jury sort of what
14 your duties and responsibilities are, what your work
15 looks like as a Forensic Scientist I?

16 A So as a Forensic Scientist I, you're
17 essentially going through all the trainings that they
18 provide at the lab. We do a number of different tests
19 mainly on blood and urine, looking for the presence of
20 drugs and alcohol. We also do serum conversions and
21 retrogrades.

22 So during your training period, I started as
23 an FSI. So that went up until I was fully signed off
24 to actually write reports that would be issued to
25 A.D.A.s across Massachusetts and which I became a

1 Forensic Scientist II.

2 Q And so what is the difference, sir, between
3 sort of your work as a Forensic Scientist I versus your
4 work as a Forensic Scientist II?

5 A So essentially as a two-year, essentially
6 fully trained and you're able to do all the testing
7 that we do in house. We also are able to go and give
8 testimony based on the reports that you write, whereas
9 an Forensic Scientist I, you're still in that training
10 process.

11 Q And did you work essentially as a Forensic
12 Scientist II from that point in time until the time
13 that you left the lab in November of '23?

14 A Yes.

15 Q Now, with reference to while you were working
16 at the lab, was there sort of an ongoing, continuing
17 educational component?

18 A Yes. We would habitually receive articles
19 based on different discoveries within the forensic
20 field. So different ways they would find certain types
21 of drugs in different bodily fluids. It's always a
22 revolving door when it comes to drugs being discovered
23 as well as being manufactured or solicited on the
24 street, et cetera, et cetera.

25 We would often get different articles, just

1 research papers, based on what they are doing to
2 discover these things within the matrices that we are
3 looking at.

4 Q Now, in addition to that while you worked at
5 the lab, what, if any, sort of -- are you familiar with
6 the term "proficiency testing"?

7 A Yes.

8 Q And what, if any, proficiency testing would
9 you undergo while you were at the lab?

10 A So we received both in-house and external
11 proficiency tests. Essentially, the process would be
12 just the same. The only difference would be is we
13 would have internal people sending us samples as if it
14 came from an external source. And then the external
15 proficiency testing I receive is actually part of our
16 accreditation. So it came in just like regular
17 samples, and we are tested accordingly per our
18 protocols.

19 Q And, as far as the proficiency testing that
20 you undertook over the course of your time at the lab,
21 did you pass each of those tests?

22 A Yes.

23 Q Now, you mentioned a little bit as far as
24 accreditation with regard to the lab. What, if any,
25 accreditation did the state police crime lab have?

1 A We had accreditation. It's a national
2 accreditation board for forensic scientists as well as
3 any kind of lab in particular and the branch that our
4 lab would fall under. We have a certain set of rules
5 that we have to adhere to. Mainly, it's a standard
6 known as an ISO 17025. But we have a different
7 accreditation board and they have narrower requirements
8 because of the type of lab that we are.

9 Q It may be pretty well understood but, as far
10 as the accreditation is concerned, that's done through
11 an external entity; is that correct?

12 A Yes.

13 Q Now, with regard to the lab as far as your
14 assignment of work, at the time that you left the lab,
15 about how many Forensic Scientists II's were working
16 within the lab in your toxicology unit?

17 A By the time that I left?

18 Q Yes.

19 A So within the toxicology unit, there was one
20 more at the time that I left.

21 Q And, as far as you and sort of the other
22 Forensic Scientists II's at the time that you worked at
23 the lab, was there some sort of rotation or how were
24 you assigned work as it related to your work in the
25 toxicology unit?

1 A So throughout my time there, we had more
2 Forensic Scientists I's and II's and we would delegate
3 each type of assignments that we would look for, the
4 different types of testing. On a monthly basis, we
5 would get a different group of tests that we performed
6 throughout that month and it would rotate to the next
7 person at the end of the month. So that's how we did
8 the testing.

9 Q Now, sir, if I could turn your attention to
10 May of 2022. You were working with the lab at that
11 time; is that correct?

12 A Yes.

13 Q And were you assigned to serum conversions at
14 that particular time?

15 A I was, yes.

16 Q And, at some point, were you specifically
17 assigned to a case involving a Ms. Karen Read?

18 A Yes.

19 Q Now, as far as a serum conversion is
20 concerned, if you could explain to the jury sort of
21 what goes into that process and what is it that you're
22 reviewing or you're looking at? How is a serum
23 conversion -- what is it and how is it performed?

24 A Sure. So with serum conversions, usually what
25 happens is that we get hospital results. So that would

1 be the police or the A.D.A.s or get results from the
2 hospitals that whoever was attended to, we get the
3 results. And usually hospital alcohol results, they
4 use serum in order to test alcohol. Serum is
5 essentially the liquid portion of blood. Let's say,
6 for instance, you fall and you cut yourself. That red
7 stuff that comes out that has serum within it, what the
8 hospital does is they centrifuge it or spin it very
9 fast in order to get the red blood cells, the white
10 blood cells and all kinds of the heavier materials out
11 of that blood. And what's left is the serum. So they
12 use that to test their alcohol.

13 What studies have shown is that they actually
14 tend to have a higher alcohol concentration in serum
15 than in blood. So that means that due to the chemical
16 nature of alcohol, it likes to stay in that liquid
17 portion more than throughout the whole blood.

18 So a serum conversion essentially is able to
19 convert the alcohol content from that serum that we get
20 from the hospital into what it would be in whole blood.

21 Q And did you have occasion to perform a serum
22 conversion in regard to Ms. Read's medical records?

23 MR. LALLY: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes.

1 BY MR. LALLY:

2 Q Sir, I'm showing you a document. I'd just ask
3 you to review that and look up when you're finished.

4 A (Witness complies.)

5 Q Do you recognize that, sir?

6 A Yes.

7 Q And what do you recognize that to be?

8 A So this is the serum conversion report that I
9 made or the calculations were made on May 3rd of 2022.

10 Q And, as far as the result that you received in
11 addition -- so what kind of materials did you receive
12 in order to perform that analysis?

13 A We got the medical records.

14 MR. LALLY: May I approach the witness again,
15 Your Honor?

16 THE COURT: Yes.

17 BY MR. LALLY:

18 Q Sir, I'm going to show you what's been marked
19 as Exhibit 106 and directing your attention to this
20 last page contained within this document here. Is that
21 a portion of the medical records that you reviewed in
22 regard to Ms. Read's serum alcohol level?

23 A Yes.

24 Q And, if you could, what was reported in the
25 medical records that you reviewed and using in your

1 serum conversion analysis as far as the level?

2 A The level was at 93 milligrams per deciliter.

3 Q And so with regard to that 93 milligrams per
4 deciliter -- I'm sorry. Was there also a time that
5 that specimen was collected as far as your review of
6 the records?

7 A Yes.

8 Q And what was that time, sir?

9 A It was at 9:00 in the morning. 9:08.

10 Q Now, as far as -- just in terms of the general
11 term as far as forensic science, what you did at the
12 lab, can you explain what that term means or what you
13 did in relation to that?

14 A What do you mean?

15 Q Let me -- that was very poorly phrased. Let
16 me try to restate that a better way.

17 What is your understanding of forensic science
18 and can you explain that to the jury?

19 A Oh. Forensic science is essentially a
20 scientific study based on anything dealing with the
21 law. So whether it comes to ballistics or DNA analysis
22 or toxicology like I did, anything focused or based on
23 the law or for legal purposes, essentially that's what
24 forensic science kind of encapsulates.

25 Q And forensic toxicology, would that sort of be

1 a subset of forensic science?

2 A Yes.

3 Q And can you explain to the jury sort of what
4 your understanding -- based on your training and
5 experience, what is forensic toxicology?

6 A So toxicology in general is generally just the
7 study of poisons, plainly speaking. So anything that
8 would be harmful to the body essentially, that would be
9 toxicology because we also not only have forensic
10 toxicology, but you also have like environmental. And
11 the forensic toxicology is just, like I said again,
12 with the forensic science, is just basing it on things
13 for legal purposes.

14 Q Now, through your training and experience, are
15 you familiar with sort of the difference between a
16 serum plasma level versus a whole blood level?

17 A Yes.

18 Q And can you explain to the jury sort of what
19 your understanding is of each and what, if any,
20 differences there are between the two?

21 A So just plainly, your serum plasma level or
22 serum plasma is what it's called. It can be referred
23 to as either/or or one or the other. So that is just
24 the alcohol level in your serum whereas your whole
25 blood is your alcohol content or regular BAC in the

1 whole blood. The difference between the two is, like I
2 said previously, in your serum or plasma, that alcohol
3 content would be higher as it would have been in the
4 whole blood.

5 Q Now, as far as the milligrams per deciliter,
6 how that's reported in the Good Samaritan medical
7 records referencing Ms. Read that you reviewed in this
8 case, is that typical as far as how hospitals would
9 report sort of the serum plasma levels?

10 A Yes. From my experience in all the times that
11 I've seen serum conversions come to the lab, milligrams
12 per deciliter are the units that they use from the
13 hospital. Yeah.

14 Q Now, as far as that 93 milligrams per
15 deciliter, what, if anything, with regard to serum
16 conversion, what, if anything, are you then able to do
17 to convert that to a BAC or a blood alcohol
18 concentration?

19 A So based on some studies, they came up with a
20 few different conversion factors, knowing that the
21 blood alcohol content would be higher than the serum
22 plasma content. They are able to apply different
23 conversion factors to the numbers that we would get in
24 serum and we usually get -- excuse me.

25 We usually give a low, an average and a high

1 being that it's kind of hard to say what one particular
2 person's conversion factor would be between the two of
3 them since it's dependent upon like age, sex, the water
4 content, what you had to eat that day.

5 So it's harder to pinpoint. Therefore, we
6 give a good range as what it could possibly be,
7 pertaining just -- just in case a person converts or
8 their conversion would be a lot lower or higher. So we
9 give a good range.

10 Q And, as far as those different conversion
11 factors, where do those come from?

12 A That's based on some studies. I don't
13 remember the actual names of the papers, but they were
14 based on studies throughout the forensic world when it
15 comes to looking at specifically testing blood and
16 serum to find that conversion factor.

17 Q And, as far as those studies are concerned, do
18 they come from sort of different population bases; is
19 that correct?

20 A Yeah. So that's how they are able to get the
21 range of conversion factors that they use.

22 Q Now, as far as the water within the serum or
23 sort of how that works with a centrifuge, what, if any,
24 relationship does that have to the reading that you get
25 or the conversion factors that you're using?

1 A So the water content, essentially, the serum
2 being the liquid portion of the blood, water is also
3 liquid. It makes up some of that serum that you get
4 from it. Therefore, your higher water content, more
5 essentially the lower the concentration could be of
6 that, lower or higher, depending upon whether or not
7 your water content in that sample is lower or higher.

8 Q So as far as those different conversion
9 factors that you're using, this is essentially a
10 mathematical calculation; is that right?

11 A Yes.

12 Q And so the different conversion factors that
13 you're using for the low, the average and the high,
14 what are those conversion factors?

15 A So the low is a 1.18 with the average being a
16 1.14 and then the high being a 1.12.

17 Q So based on your analysis as far as the
18 medical records and what was reported to you, using
19 those three conversion factors, what, if anything, did
20 you come up with as far as the low, an average and a
21 high for the 93 milligrams per deciliter?

22 A So our values that were calculated for the low
23 was a 0.078 gram percent. The high was a 0.083 gram
24 percent with the average being a 0.081.

25 Q Now, sir, with reference to the alcohol that's

1 recorded in the records, are you familiar with are
2 there different types of alcohol?

3 A Yes.

4 Q And can you explain sort of what those types
5 are and what the differences are or where they come
6 from?

7 A Sure. So the difference -- there are multiple
8 different types of alcohol, mainly based on the number
9 of carbons that are within that molecule. You start
10 off with methanol, which is one carbon, methanol you
11 can find in like some rubbing alcohols. You can find
12 them in many different labs. You have big, large vials
13 of them. Ethanol, which has two carbons. That one is
14 the common one that is in our alcohol beverages, and it
15 goes all the way up, isopropanol, octanol, et cetera.
16 It all depends on the number of carbons in the chain of
17 it.

18 Q And the type that's reported within Ms. Read's
19 medical records, that was ethanol, correct?

20 A Correct.

21 Q And so with regard to your training and
22 experience as a forensic toxicologist, are you familiar
23 with the term known as a central nervous system
24 depressant?

25 A Yes.

1 Q And can you explain to the jury what that term
2 means and how it relates to alcohol?

3 A Sure. So alcohol is what is classified as a
4 central nervous system depressant. Essentially, the
5 name kind of gives it away as to what it does. Your
6 central nervous system is responsible for essentially
7 all your movements, both involuntary and voluntary. So
8 the way you move your head. The way you blink. The
9 way you breathe. The central nervous system is
10 responsible for all of that.

11 With a depressant introduced into the body, it
12 affects that central nervous system, causing things to
13 slow down. So that's essentially what depressant
14 means. It means it's going to slow down certain
15 processes that the central nervous system would be in
16 charge of. So you can have delayed reaction times. It
17 can cause drowsiness.

18 MS. LITTLE: Objection.

19 THE COURT: Ask another question.

20 MR. LALLY: Sure.

21 BY MR. LALLY:

22 Q How would that manifest as far as a central
23 nervous depressant affecting the body?

24 MR. LALLY: Objection.

25 THE COURT: Overruled.

1 by Mr. Lally

2 Q Go ahead, sir.

3 A There are many different effects that you can
4 see or side effects from having a central nervous
5 system depressant in the body: lethargy, sleepiness,
6 drowsiness, unable to walk properly. Any kind of --
7 any one of those tests that you see on T.V. from the
8 police when they try to get your horizontal gaze and
9 they try to make sure that you're coordinated. It can
10 affect all those things.

11 Q Now, sir, are you also familiar through your
12 training and experience and work in toxicology with a
13 term known as retrograde extrapolation?

14 A Yes.

15 Q And can you explain to the jury what you
16 understand that term to mean?

17 A So a retrograde extrapolation is essentially
18 another calculation. But it allows you to be able to
19 calculate what the possible blood alcohol content would
20 have been at a time prior to when the blood was drawn.
21 Say, for instance, blood was drawn at 2:00, you could
22 essentially figure out what the blood alcohol content
23 would have been at 10:00 in the morning prior to it.

24 Q And that's done with the calculation, as well;
25 is that correct?

1 A Yes.

2 Q Now, what are some of the types of information
3 that you would need to know or that you would want to
4 know in order to perform a retrograde extrapolation?

5 A We would need to know, one, for sure what the
6 alcohol content would have been. We also need to know
7 the time that the blood was drawn as well as the time
8 of the last alcohol consumption.

9 Q Now, in regard to timing as far as what, if
10 any limitations are there in regard to perform
11 retrograde extrapolation as it pertains to timing is
12 concerned?

13 A So when we do these calculations, anything
14 that's shorter than two hours, we usually don't do that
15 conversion.

16 Q And why is that, sir?

17 A Because built in within our calculations, we
18 allow for two hours. That has to do with the way that
19 alcohol leaves the body. If the alcohol is still being
20 absorbed by the body, we want to give it enough time to
21 get to a point where it's coming out of the body as
22 opposed to increasing in the body. So that two hours
23 put the person at a point in which that alcohol would
24 be coming out as opposed to it being absorbed.

25 Q So there are essentially three different sort

1 of phases as far as intake of the alcohol into the body
2 through dissipation; is that correct?

3 A Yeah. There is a well-known kind of
4 metabolism route to which the alcohol metabolizes out
5 of the body. Yes.

6 Q And so can you describe to the jury sort of
7 that metabolism process as far as how it starts to its
8 ending?

9 A Sure. So with having, let's say, one drink,
10 what the body begins to do at that point is absorb the
11 alcohol. Usually you get like a steady level that
12 increases with time. So if you think of a regular
13 chart where you have the level of alcohol in the body
14 versus time which would be on the "Y" axis or, sorry,
15 the "X" axis of the bottom.

16 As time goes along, after your first drink,
17 the body starts to absorb the alcohol. If that was
18 your only drink and that was it, the body then at a
19 certain point stops absorbing it because there is no
20 more to absorb and it plateaus. So essentially the
21 line goes straight.

22 After that point, the body starts to eliminate
23 it at this point. And then your level or your
24 concentration of alcohol within the body decreases with
25 time as it's getting rid of it.

1 Q And so there's sort of the absorption phase,
2 a plateau and then the elimination phase; is that
3 correct?

4 A Yes.

5 Q Now, you mentioned in the course of your
6 analysis for retrograde extrapolation, it's important
7 to know sort of when the last drink was; is that right?

8 A Yes.

9 Q And why is it?

10 A That way, we can get a good time in and figure
11 out the amount of time that has passed between the last
12 drink as well as the time that the blood was taken.

13 Q Now, did you perform a retrograde
14 extrapolation analysis with regard to Ms. Read's BAC or
15 the converted BAC from the serum conversion?

16 A I did.

17 Q And so with reference to Ms. Read as far as
18 you looked at obviously the hospital records. You
19 looked at the serum conversion report. What, if
20 anything else, did you review or look at in coming to
21 that retrograde extrapolation analysis?

22 A We usually get a police incident report, and
23 that usually identifies the time at which further
24 narrative, what time they had their last drink.

25 MR. LALLY: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. LALLY:

4 Q Sir, I again present you with a document. If
5 you could just look at that and look up when you're
6 finished.

7 A (Witness complies.)

8 Q Do you recognize that document, sir?

9 A I do.

10 Q And what do you recognize it to be?

11 A This is the retrograde extrapolation report I
12 did for the subject of Karen Read.

13 Q Now, with respect to the time that you utilize
14 in that report as far as -- when was the time that's
15 utilized as far as the last drink or time of operation?

16 A The time that was utilized as the last drink,
17 it was at 12:45.

18 Q And that would be 12:45 a.m.; is that correct?

19 A Correct.

20 Q And so you're using that to sort of
21 extrapolate from 9:08 a.m. when the 93 milligram per
22 deciliter is reported from Good Samaritan to 12:45
23 a.m., correct?

24 A Correct.

25 Q Now, with regard to that 12:45 a.m., what, if

1 any, difference would it make if it were a little bit
2 off of that; say it was 12:30 a.m. or it was 1:00 or
3 1:10 a.m.? What, if any, impact would that have on
4 your conversion?

5 A So we tend to go by hours. So we kind of
6 round to the nearest, I think, 50-minute interval. So
7 a couple minutes or 10 to 20 minutes forward or behind
8 of that 12:45, it wouldn't change the results by a lot,
9 if any.

10 Q And similar to the serum conversion, is this
11 done with different conversion factors as far as a low,
12 an average and a high?

13 A So we usually just calculate a minimum and a
14 maximum for the retrograde. And that incorporates some
15 conversions, as well.

16 Q Now, as far as the minimum versus the maximum,
17 what do each of those sort of signify or how do you
18 come to those mathematical calculations?

19 A So with the minimum calculation, we
20 incorporate the two-hour period. So we assume that
21 maybe that 12:45 wasn't -- the body wasn't at that
22 point finished with the elimination. It wasn't in the
23 elimination phase. So we allow it for two hours ahead
24 of it.

25 We also have a conversion factor. Once again,

1 this is a study that was done to see the elimination
2 rate of different people within a population, what rate
3 they would get alcohol out of their system per hour.
4 So we apply the lower limit, which was a 0.1 gram
5 percent per hour, with that two-hour allotted time
6 interval. And then we use the lower serum conversion
7 number, the one that was converted on the lower end.
8 We use all of that in the calculation in order to come
9 up with the minimum. The maximum one uses the
10 opposite. So it uses the higher converted serum
11 conversion number with the higher elimination rate,
12 using the full amount of time.

13 Q And these calculations or these conversion
14 factors are all based on sort of medical studies that
15 you reviewed in literature that goes into your
16 training?

17 A Yeah. All of it was part of the training, and
18 they came up with those numbers prior to even when I
19 was hired there. But it is based on multiple different
20 studies in that, looking at that elimination rate.

21 Q And so from your calculations when it came to
22 the minimum with regard to the retrograde
23 extrapolation, what, if any, calculation, what, if any,
24 result did you come from with your calculations as it
25 pertained to the minimum?

1 A So the minimum amount that was calculated
2 would have been a 0.125 gram percent.

3 Q And that's essentially reporting in a blood
4 alcohol concentration; is that correct?

5 A Correct.

6 Q And then with regard to the maximum, what, if
7 any, result did you get from your mathematical
8 calculations in regard to that?

9 A The result was a 0.292 gram percent.

10 Q And so that range that you receive is a bit of
11 a wide range; is that fair to say?

12 A Yes.

13 Q And why is that, sir?

14 A So we based those calculations, they are based
15 on that conversion that I did from the hospital results
16 from serum, giving us two -- giving us a good range of
17 values in the first place. But then we incorporate the
18 retrograde extrapolation one which uses a time factor.
19 And that two-hour difference, using two different
20 elimination rates, that causes a wider span of values.
21 And it's just so that it can encompass essentially
22 anybody within the general population that they would
23 be somewhere in between that lower limit and that upper
24 limit.

25 Q So essentially from those mathematical

1 calculations, anyone within sort of the general
2 population with that result would be somewhere between
3 the .13 and the .29, correct?

4 A Correct.

5 MR. LALLY: May I approach just to retrieve,
6 Your Honor?

7 THE COURT: Yes.

8 MR. LALLY: If I could have one moment, Your
9 Honor?

10 THE COURT: Yes.

11 MR. LALLY: Thank you, sir. I have no further
12 questions.

13 THE COURT: Ms. Little?

14 MS. LITTLE: Thank you.

15 CROSS-EXAMINATION

16 BY MS. LITTLE:

17 Q Good afternoon.

18 A Good afternoon.

19 Q You used a method called retrograde
20 extrapolation to reach your sort of opinions and
21 conclusions in this case, correct?

22 A Yeah. It was a calculation.

23 Q And that means that you rely on an assumption
24 that a trend will continue beyond sort of observable
25 data?

1 A So the metabolism is actually pretty well
2 studied. So we know that that elimination rate, unless
3 you introduce more alcohol into the system, it declines
4 at that rate and it's pretty linear.

5 Q Extremely. So, in other words, certain
6 assumptions are incredibly important for you to reach
7 your analysis?

8 A Sure.

9 Q And that includes sort of the timing of the
10 very last drink that the individual had; is that right?

11 A Yes.

12 Q If your drinking pattern is sort of different
13 than what you assume for purposes of your calculation,
14 then you'd agree that your entire extrapolation would
15 be incorrect; is that right?

16 A Yes. It could be.

17 Q And, again, those assumptions sort of included
18 the time of the incident, right?

19 A Yes.

20 Q And, importantly, the time of the last drink?

21 A So those two will be what we use, is the time
22 of the blood draw as well as the time of the incident
23 or last drink.

24 Q And your report acknowledges the testing that
25 was used to obtain ethanol results in this case was not

1 performed by the Massachusetts State Police Crime Lab?

2 A Correct.

3 Q And, for that reason, the report and those
4 results do not fall under your forensic lab
5 accreditation standards?

6 A Correct.

7 Q The Massachusetts State Police, as you
8 testified, is an accredited forensic lab?

9 A Yes.

10 Q And so you're required to meet certain minimum
11 standards in order to uphold that?

12 A Yes.

13 Q And you'd agree that those accreditation
14 standards are different from accreditations that, say,
15 a hospital lab might have?

16 A They can be.

17 Q And do you ever work on testing within the
18 Massachusetts State Police lab for serum tests or whole
19 blood tests?

20 A So we did test the blood and serum for alcohol
21 content at the Massachusetts State Police Crime Lab,
22 yes.

23 Q And their typical protocols are to use whole
24 blood tests?

25 A We use whole blood or serum.

1 Q In terms of the machinery that's used with the
2 Massachusetts State Police Crime Lab, you'd agree that
3 the gold standard is gas chromatography and mass
4 spectrometry machines?

5 A Usually with a head space detector.

6 MR. LALLY: Objection.

7 THE COURT: I am going to -- go ahead. You
8 can answer that.

9 THE WITNESS: Usually with a head space
10 detector, yes.

11 BY MS. LITTLE:

12 Q And that would detect whole blood rather than
13 serum?

14 A No. It detects any volatile substance.

15 Q But you'd agree that a serum test, usually, as
16 you testified, has as much higher level than whole
17 blood?

18 A Yeah, due to the nature of the substance,
19 itself.

20 Q And so you kind of have to go through this
21 extra step of trying to extrapolate, okay, how do I
22 convert this to get to whole blood?

23 A So what we incorporated any time we had a
24 blood -- sorry -- a serum sample submitted to the lab
25 for alcohol testing, we actually did the same serum

1 conversion in order to figure out what the blood
2 alcohol concentration would have been.

3 Q And that's an extra step that you have to take
4 using conversion factors, correct?

5 A Yes, as a calculation.

6 Q You're not actually testing for ethanol in the
7 blood. You're testing for NADH. And then you have to
8 do a conversion to get it to what a whole blood test
9 just automatically would show you?

10 A Yes. So we get the serum level. And then we
11 convert it by a calculation.

12 Q And typically in the Massachusetts State
13 Police Crime Lab, you would do what's called
14 confirmatory testing; is that right?

15 A Yes. So we have a screening method as well as
16 a confirmatory test. Correct.

17 Q And confirmatory testing means that you take
18 two separate samples and you test both of those?

19 A Essentially, well, our protocol involved
20 testing in duplicate. But that's not always the case
21 for the other drugs that we tested. We essentially
22 have a screen test, which is one type of test. And
23 then the confirmatory test would be a separate test or
24 sometimes even the same test, just rerun the sample
25 again.

1 Q And the reason you typically would do two
2 tests is to ensure that there is no error in the
3 testing?

4 A Correct.

5 Q And that acts as a failsafe against false
6 positives. You'd agree with that?

7 A Yes.

8 Q And it also ensures that you're testing the
9 correct sample?

10 A Correct.

11 Q And, in this case, obviously, you didn't
12 conduct any of the testing?

13 A Correct.

14 Q You're just assuming the accuracy of a single
15 test that was performed by a hospital?

16 MR. LALLY: Objection.

17 THE COURT: I'll allow it.

18 THE WITNESS: Yes.

19 BY MS. LITTLE:

20 Q And so if the clinical results are invalid,
21 then your extrapolation is going to be invalid?

22 A Yes.

23 Q Now, you discussed a lot about sort of serum
24 testing and conversion rates. Do you recall that
25 testimony?

1 A Yeah.

2 Q And you'd agree that the precise conversion
3 rate between serum ethanol levels and whole blood
4 ethanol levels is almost impossible to accurately
5 predict?

6 A For each individual person, it would be
7 difficult. Yes.

8 Q And that's because the amount of water in our
9 blood is scientifically impossible to predict with
10 accuracy?

11 A I'm not aware of any kind of test that would
12 do that. So yeah.

13 Q Because individuals are different, right?

14 A Yes.

15 Q And so the conversions that you use are based
16 on averages from scientific studies?

17 A Yes.

18 Q But you'd agree that in certain instances,
19 people can fall outside of that average range?

20 A Yeah.

21 Q In fact, a comparison of, you know, hospital
22 serum alcohol levels, they range quite wildly. You'd
23 agree with that?

24 A Yeah.

25 Q In fact, you're aware that some studies show

1 that a conversion rate from serum alcohol to blood
2 alcohol can be as high as 1.59 percent?

3 A I wasn't aware of those numbers, but yeah. It
4 could range -- that's why we give a wide range, and you
5 could lie on the outskirts of either side.

6 Q And so that would mean that the actual blood
7 alcohol content, once it goes through the conversion
8 rate, would be much, much lower than sort of the
9 average conversion rate that you relied on?

10 A Yeah. It could be both higher and lower.

11 Q And that includes that range that you gave,
12 right?

13 A Yeah. It could fall into either range.

14 Q You'd agree that the more imprecise an
15 extrapolation is the less reliable it is?

16 A Yeah. You do have to base it on good -- your
17 starting blocks have to be good. So you have to know
18 the times in which the blood was drawn, the time of the
19 incident and essentially what your value was for your
20 BAC.

21 Q And the time of the last drink? You'd want to
22 know that?

23 A So we would put that around the time, yeah.
24 Either the time of the last drink or the incident date.

25 Q And so the more sort of unknowns you're trying

1 to account for, you'd agree the less reliable your end
2 result is going to be?

3 A It could be, yes.

4 Q And you'd agree that sort of the range you
5 gave in this case, which was .135 to .292, that's a
6 very, very large disparity?

7 A Yeah.

8 Q Almost sort of a 120-percent swing?

9 A Yeah.

10 Q That would be the equivalent, for example,
11 predicting a child is going to grow somewhere from six
12 feet to 14 feet?

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 BY MS. LITTLE:

16 Q It's a very large number? You'd agree with
17 that?

18 A Yeah. There's a large range, like I said, due
19 to the factors involved in the calculation. That's how
20 it gets so large.

21 Q And that's because you're acting with a lot of
22 unknowns in this case?

23 A Yes.

24 Q Now, you testified that your retrograde
25 extrapolation assumes that Ms. Read reached the

1 elimination phase of processing alcohol at or before
2 sort of 12:45 a.m.?

3 A Yeah. We start for the maximum at the 12:45.
4 And then it would have been 2:45 for the minimum.

5 Q And so for purposes of your calculation, if
6 Ms. Read drank alcohol after 12:45 a.m. and before her
7 blood was drawn at 9:08 a.m., your entire calculation
8 would be invalid?

9 A Yeah.

10 MS. LITTLE: No further questions.

11 THE COURT: Anything, Mr. Lally?

12 MR. LALLY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. LALLY:

15 Q So in this instance, Mr. Roberts, you're
16 dealing with a time of incident that was known,
17 correct?

18 A Yes. It was given to me that it was at 12:45.

19 Q And, as far as the BAC or the serum conversion
20 that was coming from a medical record as far as so that
21 was known as well at 9:08 in the morning?

22 A The time that the blood was drawn. Yeah.
23 That was known, as well.

24 Q Now, as far as -- the question you were just
25 asked if the defendant drank alcohol after 12:45, does

1 that include sort of shortly after 12:45 or how long
2 after 12:45 would it take in order to affect your
3 calculations or your retrograde extrapolation?

4 A It's hard to say where that would have skewed
5 it. It would have definitely caused a different time
6 frame, depending on how long after the incident or the
7 reported last drink, if there was another drink in
8 between there. It would shorten up the amount of time
9 that would have been prior to the blood draw, for sure.

10 Q So what I'm asking you is would it have any
11 significant impact or would there be any difference if
12 the last drink was, say, at 1:00 a.m. versus 5:00 a.m.?

13 A So that would be a four-hour difference.

14 Q Right.

15 A So essentially, that could -- given the
16 conversion rates, that would be -- that would put the
17 numbers very different. Yeah.

18 Q Well, what I'm saying is so the 5:00 a.m.
19 would significantly impact your calculations, correct?

20 A Yes.

21 Q The 1:00 a.m., would that significantly impact
22 your calculations?

23 A No.

24 MR. LALLY: Nothing further.

25 THE COURT: Are you all set, Ms. Little?

1 MS. LITTLE: If I could just ask one question.

2 THE COURT: Sure.

3 RECROSS-EXAMINATION

4 BY MS. LITTLE:

5 Q You said that you were given 12:45 as the time
6 that you sort of based your analysis on?

7 A Yes.

8 Q And, to be clear, that was not something that
9 was provided to you by my client, right?

10 A No.

11 Q That was something that was provided to you
12 from a police report?

13 A Correct.

14 MS. LITTLE: No further questions.

15 THE COURT: All right. Mr. Roberts, you are
16 all set, sir. Thank you very much.

17 (Whereupon, the witness was excused.)

18 THE COURT: Your next witness, Mr. Lally?

19 MR. LALLY: Yes, Your Honor. The Commonwealth
20 calls Mr. Michael Trotta to the stand.

21 Whereupon,

22 MICHAEL TROTTA

23 having been first duly sworn, was examined and
24 testified under oath as follows:

25 THE COURT: All right. Mr. Lally, whenever

1 you're ready.

2 MR. LALLY: Thank you.

3 DIRECT EXAMINATION

4 BY MR. LALLY:

5 Q Good afternoon, sir. Could you please state
6 your name and spell your last name for the jury?

7 A Michael Trotta, T-R-O-T-T-A.

8 Q And where do you live, sir?

9 A Sharon, Mass.

10 Q And how long have you lived in Sharon?

11 A How long in Sharon?

12 Q Yes.

13 A Since '82.

14 Q And what do you do for work, sir?

15 A I am the superintendent of public works for
16 the town of Canton.

17 Q And how long have you held that position as
18 the superintendent of public works?

19 A Since 2003.

20 Q And did you work for the town of Canton prior
21 to 2003?

22 A No.

23 Q Now, with regard to being the superintendent
24 of public works, can you describe to the jury sort of
25 what are your duties and responsibilities when it comes

1 to that work?

2 A Typical management duties of staffing,
3 controlling, directing, working on the budget, working
4 on scheduling, long-term scheduling five to 10 years,
5 capital planning, overall operations, the day-to-day
6 operations, what it takes to maintain a water system,
7 the road system.

8 Q Now, with reference to -- if I could turn your
9 attention back to late January, early February of 2022,
10 at some point in early February, were you contacted by
11 a trooper in regard to a blizzard that had happened the
12 week before?

13 A Yes.

14 Q And do you recall who that trooper was or how
15 they contacted you?

16 A I believe it was Michael Porter, and I believe
17 the contact was by phone.

18 Q Now, with reference to that trooper, is that
19 someone that you knew or you had spoken to before in
20 any way?

21 A No.

22 Q And, prior to that day, did you know John
23 O'Keefe or Karen Read or anybody --

24 A No.

25 Q And, as far as anybody within an Albert family

1 within the town of Canton, were you familiar with them?

2 Did you know them at that time?

3 A No.

4 Q Now, when you were contacted in that early
5 February of 2022 in regard to the blizzard the week
6 before, what, if anything, was the trooper asking you?
7 What kind of information were they looking for?

8 A He wanted to know what the procedure was when
9 we prepare and staff a snowstorm.

10 Q And if you could explain to the jury sort of
11 what is the procedure or what -- at that time, what was
12 the procedure and what was sort of the makeup of what
13 Canton DPW would do with regard to a snowstorm?

14 A Well, we have -- the two is divided up into, I
15 believe, 29 plow routes, several main routes and side
16 routes. The routes are generally somewhere between
17 three miles and three and a half miles long, and
18 there's -- we have 30, I think back then we had, 39
19 pieces of our own and probably 30-something private
20 plow trucks.

21 We try very hard to have two trucks on a
22 route, but we generally don't get enough. So if we --
23 we try to have a town truck on a route with a private
24 plow on a route. The private plow is procured through
25 a bid process. They have to have a contract. They

1 have to have insurance, liability insurance; and they
2 have to show that they've paid their taxes to the state
3 and that they have worker's comp. and they have a
4 contract with the town.

5 Then the operations manager is in charge of
6 the onsite boots on the ground, if you want to call it
7 that. He'll assign the specific truck and the private
8 contractor to a route generally the day before. Maybe
9 12, 18 hours before, the two of us talk.

10 We schedule. We try to schedule the overtime
11 so that you're not going home at 3:00 o'clock and then
12 you're getting woken up at 1:00 or 2:00 o'clock in the
13 morning to come back. We like to schedule it so when
14 the guys go home they know when they're going to come
15 back. To the best of our ability, that's what we will
16 do.

17 We will tell the contractors when they are
18 expected. And, generally, if we are plowing, it starts
19 with a sanding operation. So we would have our sanding
20 lead, which is maybe a dozen trucks. They'll come in
21 early. And then the rest of the public works people
22 come in at a scheduled time.

23 Q And so there would be about -- and correct me
24 if I'm wrong -- there would be about 30-some-odd trucks
25 that were sort of DPW trucks?

1 A A few more. I'm not sure of the exact number.
2 It's probably 37 or 38 because that counts sidewalk
3 plows too. So there may be -- I think there's three
4 sidewalk plows. So there's probably 34 or 35, we'll
5 say, between medium-sized trucks and the big
6 construction trucks.

7 Q And that was sort of my next question. As far
8 as the DPW trucks are concerned, do they vary in size
9 or what is sort of the range in size of the town
10 trucks?

11 A They will go from a pickup, a two-ton pickup,
12 F-150 or F-250 Ford, if you're familiar with that, to a
13 medium-duty 20,000 or 22,000 pound truck up to a large
14 construction truck, which is generally 26-28,000
15 pounds. The large truck is a six-wheel truck.

16 Q And, as far as the other trucks, the private
17 ones, those are sort of subcontracted out through the
18 bidding process; is that correct?

19 A Yes.

20 Q And would the range, as far as the size of
21 those trucks, would that be similar or something
22 different?

23 A They are pickup trucks, usually lighter pickup
24 trucks. There may be a couple of front-end loaders.
25 There's probably -- I don't think there is any big,

1 heavy-duty trucks, but they're probably pickups. There
2 might be a few, a couple of Jeeps, pickups, again, a
3 medium-duty like an F-350 or F-450 pickup. Those are
4 Fords. And loaders.

5 Q Now, with respect to questions or what you
6 were asked about by the trooper, was there a specific
7 sort of street or plow route that the trooper was
8 inquiring about?

9 A I believe he asked who was down at Fairview or
10 down in Cedarcrest area. That's what we call it. I
11 believe that's what he asked me.

12 MR. LALLY: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. LALLY:

15 Q Sir, I'm showing you a document. If you
16 would just look at that and look up when you're
17 finished.

18 A (Witness complies.)

19 Q Do you recognize that, sir?

20 A Yes, sir.

21 Q And what do you recognize it to be?

22 A This would be a plow plan for that date. It's
23 a plow plan for the season, but it is particularly a
24 plow plan for that storm of January 28th through
25 January 29 of 2022.

1 Q Thank you.

2 MR. LALLY: May I approach again, Your Honor?

3 THE COURT: Yes.

4 MR. LALLY: The Commonwealth would seek to
5 introduce this as the next exhibit.

6 MR. YANNETTI: I have no objection.

7 THE COURT: Thank you.

8 (Whereupon, document was entered and marked Exhibit
9 No. 109 in Evidence.)

10 THE COURT REPORTER: Exhibit 109.

11 BY MR. LALLY:

12 Q Mr. Trotter, when it comes to that form before
13 you that's now been marked as Exhibit 109, I just have
14 a couple of questions for you in regard to what's
15 listed there.

16 So with regard to the top of the page, there
17 is a listing as far as 1/28/2022, Bolivar, 11:00 p.m.
18 Do you see that?

19 A Yes.

20 Q And what does that mean, sir?

21 A That means that the first group of workforce
22 which would be the sanders were scheduled to come in at
23 11:00 o'clock that night.

24 Q Now, as far as -- the next entry going across
25 the top of the page has 1/29/2022; is that correct?

1 A Yes.

2 Q And, as far as what's listed as
3 "W&S/BM/REC@2:00 a.m.," what does that mean?

4 A "W&S" would be water and sewer. "BM" would be
5 building maintenance. "REC" would be the rec. And
6 they are scheduled. That would be the balance of the
7 Canton's workforce. They were scheduled to come in at
8 2:00 o'clock in the morning.

9 Q And that 2:00 a.m., would that be at the same
10 sort of central location on Bolivar?

11 A Yes. They would all report to the Bolivar
12 Street garage. I think that address is 150 Bolivar
13 Street.

14 Q Now, as far as the next listing, it states,
15 "Contractors at 3:00 a.m."; is that correct?

16 A Yes, sir.

17 Q And who is that referring to?

18 A That would refer to all of the private
19 contractors that would be plowing that day. So again,
20 it's staged.

21 Q And sort of the last sort of notation on the
22 top of that, it indicates, "Out at 5:00 a.m.,
23 1/30/2022"; is that correct?

24 A That would be when we completed and everybody
25 went home.

1 Q Now, with reference to the Cedarcrest
2 neighborhood or the area that would include Fairview
3 Road, there's different route numbers that are
4 assigned; is that correct?

5 A Yes.

6 Q And which route number would include Fairview?

7 A That would be lower Cedarcrest, No. 11.

8 Q And from that, that would include lower
9 Cedarcrest, Kings, Fairview and Spring, correct?

10 A Yes.

11 Q And, as far as the vehicles and the vehicle
12 types that were assigned to that route pursuant to this
13 list, what types were they and who was assigned to it?

14 A Truck 30, which would be a town of Canton
15 truck. That's a 43 International. Brian Loughran
16 would be the driver. The 43 Intentional is a medium-
17 duty truck. The next up would be a 7400 International.
18 That would be the large construction truck. And there
19 is an absolute -- excuse me -- a By-the-Yard 4x6, which
20 is -- I believe that's a small one-ton dump. That
21 would have been the private contractor that was on the
22 route with the city truck.

23 Q And so that Truck 30, the 4300 Intentional, is
24 that a bigger truck or a smaller truck than the one-
25 ton?

1 A Than the, please, again?

2 Q The one-ton.

3 A Than the one-ton?

4 Q Yes.

5 A It's a larger truck. It's like a three- to
6 five-cubic-yard truck and the large truck is like an
7 eight- to 10-cubic yard. It's a dump. It's a dump
8 truck.

9 Q And, as far as the height on that
10 International, would that be -- how much -- would it be
11 taller or shorter than say a one-ton dump?

12 A If you want, I would estimate that if you're
13 sitting in the driver's seat of a car, you're probably
14 two and a half feet. When you're sitting in the
15 driver's seat of a one-ton, it's somewhere around three
16 feet. When you're sitting in the driver's seat of this
17 4300, you're probably somewhere around four to four and
18 a half feet. And, when you're sitting in the big
19 construction truck, you're another eight to 10 inches,
20 five feet, five feet plus.

21 Q Now, when you're driving or when the plow
22 drivers are plowing the routes or roads, excuse me,
23 what, if any, sort of instructions are they given as
24 far as how to first start plowing the roads when they
25 first come upon sort of dropping the plows and going to

1 work?

2 A If we are in a plowable situation which is
3 kind of hard to define, it's generally when we feel
4 that traffic is impeded or it may not be able to safely
5 get up and down the streets. So that's probably
6 anywhere around two inches. They are instructed -- and
7 we're expecting the heavy -- they are instructed to
8 plow the middle of the road, keep the middle of the
9 road open and, as they make their way through the
10 route, they are supposed to push back a little bit. If
11 they try to clean a whole lane and then come back and
12 do the lane again, generally they end up being in
13 trouble and they can't keep up if they're having snow.

14 So again, they're instructed to plow the
15 middle of the road to keep the roads open as much as
16 they can before they do their finish cleanup.

17 MR. LALLY: If I may have one moment, Your
18 Honor?

19 THE COURT: Yes.

20 MR. LALLY: Thank you, sir. No further
21 questions.

22 THE COURT: All right. Mr. Yannetti?

23 MR. YANNETTI: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. YANNETTI:

1 Q Good afternoon, Mr. Trotta.

2 Sir, Michael Proctor called you on February
3 3rd of 2022. Does that sound right?

4 A It may be. I'm not sure of the date.

5 Q It was within days of the big snowstorm,
6 correct?

7 A Yes.

8 Q You knew that he was investigating the death
9 of John O'Keefe which had occurred on January 29th,
10 correct?

11 A I did not know that.

12 Q Had you heard that there was a police officer
13 who was found dead on the lawn of another police
14 officer in Canton?

15 A Well, I knew, yes. I knew --

16 Q It was fairly big news at the time, correct?

17 A Yes.

18 Q And were you aware that that was why
19 Michael Proctor was calling you related to that
20 investigation?

21 A After he called and identified himself, he
22 said that is why he was calling.

23 Q Of course. Now, you spoke with him over the
24 phone only, correct?

25 A Yes.

1 Q He never came down to the DPW to meet you in
2 person, correct?

3 A Not me, no.

4 Q And he never asked to interview any of your
5 employees, correct?

6 A That, I -- we may have discussed who was on
7 that route and who plowed, but I'm not sure at that
8 time if he had told me that he was going to go talk to
9 anybody else.

10 Q Oh. So it's your testimony that you may have
11 told him the identity of the plow driver when you spoke
12 with him on February 3rd on the phone?

13 A I may have, but I am not positive.

14 Q You don't have a memory of him asking you who
15 the plow driver was?

16 A He asked -- no. I don't have a memory of his
17 exact questions.

18 Q But leaving aside the exact wording of his
19 questions, it's fair to say you don't have a memory of
20 him asking you who plowed Fairview Road on January
21 29th; is that fair to say?

22 A He asked me about -- I believe he asked me
23 about this plow list.

24 Q About what, the plow list?

25 A This plow list.

1 Q Right. But on the plow list there's the name
2 "By the Yard," correct?

3 A Yes.

4 Q All right. There's also to the left of that
5 an indication of the name of the plow driver. And it's
6 just a first name and a last initial, correct?

7 A Yes.

8 Q It doesn't spell out the whole last name; does
9 it?

10 A No.

11 Q But you know the full last name, correct?

12 A Yes.

13 Q You have a limited number of employees, right?
14 It's not a 1,000-person company, right?

15 A Yes.

16 Q And you're well familiar that Brian L. is
17 Brian Loughran, right?

18 A Yes.

19 Q As you sit here today, do you have any memory
20 of whether the name Brian Loughran was brought up
21 during that phone call with Michael Proctor?

22 A I may have said to him that's who B.L. was,
23 but I did refer -- I believe I referred him to the
24 operations manager to double check who was on plowing
25 that day.

1 Q Okay. You say you may have mentioned the name
2 Brian L., Brian Loughran. But, again, I'm just trying
3 to drill down on what your memory is. Do you have a
4 memory one way or the other as to whether the name
5 Brian Loughran came up in that conversation?

6 A If you are asking me do I remember 100
7 percent, no.

8 Q Okay. In any case, Trooper Proctor, Michael
9 Proctor, never asked to speak with Brian Loughran when
10 he talked to you over the phone, correct?

11 A He did not ask me. No.

12 Q How short was that phone call with Michael
13 Proctor?

14 A If I tell you, you're going to ask me how do I
15 know for sure.

16 Q I may.

17 A I would say a few minutes, whatever a few
18 minutes is.

19 Q I'm going to accept that answer.

20 And you would agree with me that -- and, by
21 the way, you were trying to be helpful, correct?

22 A Yes.

23 Q After that couple- or three-minute phone
24 conversation, you'll agree with me that Michael Proctor
25 never followed up again with you personally?

1 A That's a good question. I am not sure.

2 Q Okay. Well, I'd like to direct your attention
3 to about a week and a half later, specifically, the
4 date of February 14th of 2022, which maybe you don't
5 remember the precise date, but around that time period.
6 You came into work around that time period and you
7 learned that a defense investigator named Paul
8 Mackowski had left his business card for you with
9 somebody on the DPW staff, correct?

10 MR. LALLY: Objection.

11 THE COURT: Sustained. Ask a different
12 question.

13 THE WITNESS: I do not --

14 THE COURT: Sir, don't answer that question.
15 I think he's going to ask one that is an
16 appropriate one for you to answer. Okay?

17 THE WITNESS: All right.

18 BY MR. YANNETTI:

19 Q Do you recall when you came into work
20 receiving a business card from Paul Mackowski?

21 A No.

22 Q Do you recall calling Paul Mackowski back?

23 A No.

24 Q Do you recall speaking to any investigator
25 from the defense at any point within a couple of weeks

1 after your spoke to Trooper Proctor?

2 A No.

3 Q Do you deny telling Paul Mackowski to call
4 Bill Walsh?

5 MR. LALLY: Objection.

6 THE COURT: Sustained.

7 BY MR. YANNETTI:

8 Q Who is Bill Walsh?

9 A Billy Walsh is the operations manager.

10 Q Is he the highway department supervisor?

11 A Yes.

12 Q Did the name Bill Walsh ever come up in your
13 conversation with Michael Proctor back on February 3rd?

14 MR. LALLY: Objection.

15 THE COURT: Did that name come up when you
16 first spoke with Trooper Proctor?

17 THE WITNESS: Again, I believe I mentioned it,
18 but I am not positive.

19 BY MR. YANNETTI:

20 Q All right. And is it fair to say that the
21 Canton DPW has their own plowing and sanding trucks?

22 A Yes.

23 Q Does one of them in particular have a
24 nickname?

25 A If they do, I don't know what they are.

1 Q Have you heard one of your trucks being called
2 Frankenstein?

3 MR. LALLY: Objection.

4 THE COURT: Sustained.

5 BY MR. YANNETTI:

6 Q You don't drive the trucks, correct?

7 A No, I do not.

8 Q But Brian Loughran does?

9 A Yes, he does.

10 Q And Brian Loughran was driving the truck that
11 plowed Fairview on January 29th of 2022?

12 A Yes.

13 MR. LALLY: Objection.

14 MR. YANNETTI: If I may have a moment?

15 THE COURT: Yes. The answer will stand.

16 MR. YANNETTI: May I approach?

17 THE COURT: The witness or the sidebar?

18 MR. YANNETTI: The witness.

19 THE COURT: Yes.

20 MR. YANNETTI: Sorry.

21 BY MR. YANNETTI:

22 Q Do you have reading glasses, as well?

23 A Well, I have -- yes.

24 Q Are you able to read the exhibit that you have
25 in front of you?

1 A Yes.

2 Q Terrific. I am handing you another document,
3 sir. And I would ask if you would compare that
4 document with the document you have in front of you and
5 tell the jury if it's the same document or not.

6 A It appears to be.

7 Q Does it appear to be identical?

8 A Yes.

9 MR. YANNETTI: Okay. I will take the one back
10 that does not have the exhibit sticker on it.
11 Thank you, sir. And I have no further questions.
12 Thank you.

13 THE COURT: Any followup, Mr. Lally?

14 MR. LALLY: No, Your Honor, but may I just
15 retrieve the exhibit?

16 THE COURT: Yes.

17 All right, Mr. Trotta. You are all set, sir.
18 Thank you very much.

19 (Whereupon, the witness is excused.)

20 THE COURT: Do you have another witness here,
21 Mr. Lally?

22 MR. LALLY: Yes, Your Honor.

23 THE COURT: Okay. Your next witnesses,
24 please.

25 MR. LALLY: Your Honor, the Commonwealth would

1 call Mr. Louis Jutras to the stand.

2 Whereupon,

3 LOUIS JUTRAS

4 having been first duly sworn, was examined and
5 testified under oath as follows:

6 THE COURT: All right, Mr. Lally.

7 MR. LALLY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. LALLY:

10 Q Good afternoon, sir.

11 A Good afternoon.

12 Q Could you please state your name and spell
13 your last name for the jury?

14 A Louis Jutras.

15 Q And where do you live, sir?

16 A Stoughton, Massachusetts.

17 Q And how long have you lived in Stoughton?

18 A About 23 years.

19 Q And what is it that you do for work, sir?

20 A I work for the town of Canton. I am the
21 manager of the information systems division of the
22 finance department.

23 THE COURT: I'm sorry. What was the last
24 part? The manager --

25 THE WITNESS: Of the finance department.

1 THE COURT: Thank you.

2 BY MR. LALLY:

3 Q And, sir, how long have you held that
4 position?

5 A Almost 25 years.

6 Q Now, if you could, explain to the jury just as
7 far as your job is concerned, what does that relate to
8 or what is it that you do as a director of
9 informational services?

10 A Sure. So my responsibility is for the
11 municipal departments and all the technology associated
12 with that.

13 Q And does that include everything sort of from
14 cell phones to GPS and town vehicles to security
15 systems and things of that nature?

16 A Yes.

17 Q Now, with reference to your department, how
18 many people work in your department?

19 A There are three of us in total. Myself and
20 two others.

21 Q So you essentially supervise the other two
22 people, as well?

23 A Yes.

24 Q Now, at some point, if I could turn your
25 attention to around the time of January 29th, 2022,

1 some point after that, did someone from law enforcement
2 or from a police department reach out to you in regard
3 to security cameras or camera systems within the town
4 of Canton?

5 A Yes. I received notification from Lieutenant
6 Gallagher that there was a motor vehicle incident in
7 town, that the state police would be looking for some
8 video footage.

9 Q And so you received an initial notification
10 from Lieutenant Gallagher, telling you that state
11 police would be reaching out, looking for video?

12 A Correct.

13 Q And, at some point shortly after that, did you
14 receive any sort of -- did anybody from the state
15 police reach out?

16 A Yes. Trooper Dunne reached out. We had a
17 phone conversation. We had email correspondence
18 relative to dates and times. We had pulled some
19 footage from one site in Pequitside Farm that was put
20 together. And then after that, there was a request for
21 anything facing Washington Street either from town hall
22 or from --

23 Q And so as far as what was relayed to you by
24 Trooper Dunne, what was sort of the description or what
25 was it that you were asking, just specifically time

1 frames or did you get any other information as far as
2 what you were looking for?

3 A From what I recall, there were two different
4 time frames, between 12:00 and 1:00 and then between
5 5:00 and 6:00 that was in our discussion and
6 correspondence relative to town hall.

7 Q And, just to be clear, that's from 12:00 a.m.
8 to 1:00 a.m. and then 5:00 a.m. to 6:00 a.m.?

9 A Correct.

10 Q Now, as far as the Pequitside Farm, can you
11 describe to the jury sort of what kind of location that
12 is or what kind of town property it is and where it is
13 in relation to the town of Canton?

14 A Yes. So the physical area is off of Pleasant
15 Street, which intersects with Washington Street,
16 closest to Dedham Street and the police department.
17 That's a large area, a big white house. And we have
18 cameras that, you know, face the entrance, the street
19 and that surround the building.

20 Q And, as far as the coverage from those
21 cameras, have you had occasion on -- this occasion or
22 prior occasions or subsequent occasions to look at sort
23 of the view that the camera gets from Pequitside Farm?

24 A Yes. We have a straight shot down from the
25 building, down the entrance driveway, right to the

1 street. The other cameras that are around there,
2 there's a couple of doorbell-type cameras that
3 physically focus on specific sections and then other
4 ones cover the general grounds around the building and
5 the backside.

6 THE COURT: Can I interrupt for a minute, sir?
7 Could you please spell the name of the farm?

8 THE WITNESS: Yes. Pequitside.

9 P-E-Q-U-I-T-S-I-D-E.

10 THE COURT: Thank you.

11 BY MR. LALLY:

12 Q And, sir, Mr. Jutras, is it fair to say that
13 Pequitside Farms cameras cover more of the property and
14 less of the street out in front; is that correct?

15 A Yes.

16 Q Now, as far as the -- that was the initial
17 request, was in regard to Pequitside; is that correct?

18 A Correct.

19 Q And so the subsequent request, what was that
20 in regard to?

21 A That was for anything, town hall, library,
22 that physically faced Washington Street.

23 Q And so the town hall and the library, sort of
24 where are they situated in relation to each other and
25 in relation to Washington Street?

1 A Yes. So they physically abut on either side
2 of Washington Street right at the intersection of
3 Sherman. They are diagonal to each other.

4 Q Now, as far as the recording devices or the
5 cameras on town buildings within the town of Canton,
6 are those -- are they sort of uniform or does it vary
7 from location to location or vary within the location?

8 A The physical model of the recorder as far as
9 the manufacturer, that is the same that we have across
10 15 different sites. The types of cameras do change,
11 interior, exterior, doorbell, things like that. But
12 all of the actual recording units are of the same
13 manufacturer, just different sizes and models.

14 Q And, as far as the town hall and the public
15 library cameras as far as the exterior cameras, at
16 least, they face in that area of Washington Street and
17 actually capture portions of Washington Street?

18 A Yes.

19 Q Now, as far as the cameras are concerned,
20 particularly the exterior cameras that we are talking
21 about as far as the library and the town hall, how are
22 they sort of set up to record? Is it one continuous
23 recording? Are they motion activated? How are they
24 set up?

25 A Yes. The cameras, you know, based on size and

1 so on, they are all set up for motion in pretty much
2 all of our locations.

3 Q And, as far as the -- from your review of
4 those cameras, is there any sort of indication on the
5 footage as far as date and timestamp or anything like
6 that?

7 A Yes. We usually have it in one of the corners
8 or someplace along when we have the video saved and
9 exported.

10 Q And, when you were able to pull the video that
11 the troopers were requesting, the date and timestamp
12 affixed to those videos, was that accurate as to what
13 the date and timestamp actually was at the time that
14 it's recording?

15 A Yes. I believe so.

16 Q And those date and timestamps, do you know
17 where they come from? Where do they derive from?

18 A The system is linked to a time server which is
19 remote and is used from the national standards.

20 Q Now, as far as the video is concerned from
21 those, they are motion activated, but how far back do
22 they go as far as -- how many days passed before it --
23 does it get sort of overwritten at some point?

24 A Yes. Depending on the site, you know, most of
25 them, because of the motion activated, because of

1 various request types and so on and the number of the
2 cameras, we usually try to get about 30 days. There
3 are some that go longer because the site is or isn't
4 used as much. And then there are other ones where, you
5 know, specifically with the library, they only
6 requested to have a maximum of 30 days on that device.

7 Q And so when you received this request from the
8 troopers, that was well within the 30 days; is that
9 correct?

10 A Yes, because we are talking February 7th for
11 the last request.

12 Q Now, as far as the video that you exported --
13 well, let me ask you this. As far as when you were
14 asked to retrieve that video, can you explain sort of
15 mechanically the process of how you got that video and
16 how you delivered that to the trooper?

17 A Uh-huh. Yes. So specifically for the town
18 and the library one, that, again, time frame provided,
19 using the manufacturer's software product, doing the
20 search, picking the cameras that are facing the
21 Washington Street side and then having the time frame
22 and exporting that out. That becomes, depending on the
23 size of it, either a full executable that can just be
24 opened and viewed or a compilation of files that has a
25 player with it. And then, based on the fact that we

1 had already put videos together and that that material
2 was picked up, I had sent a file share link for that
3 information.

4 Q And you had sent that file share link to
5 Trooper Dunne; is that correct?

6 A Correct.

7 Q Now, as far as the video that you reviewed,
8 were you sort of parsing or were you looking for a
9 specific area or did you just sort of take the whole
10 time period requested and send that off to the trooper?

11 A As far as I recall, it was the whole time
12 frame, just because we only have two cameras or so that
13 physically cover the area in question and he had two
14 separate hours in question, as well. So they were able
15 to be exported and sent.

16 Q Now, as far as this particular video, this is
17 video only, correct? There's no audio that's attached
18 to these cameras?

19 A Correct. No audio.

20 Q Now, as far as access to these cameras and the
21 footage within the cameras, who, if anyone, besides
22 yourself would have access to remove any sort of
23 footage from the cameras?

24 A No one.

25 Q Now, sir, before we get to the camera footage

1 specifically, I just want to ask you about another
2 area.

3 A Uh-huh.

4 Q In relation to also within -- sort of the
5 ambit of your duties and responsibilities would include
6 GPS on town trucks, correct?

7 A Yes. Public works has a setup via their
8 radios for GPS information.

9 Q And so with regard to that, specifically the
10 DPW trucks, what, if any, information did you receive
11 from anyone at the DPW in relation to those GPS devices
12 within the trucks shortly after the snowstorm from the
13 28th and the 29th of January?

14 A Yes. So on February 1st, I received
15 notification from the operations manager that the GPS
16 information was not working.

17 Q And so you received information after the
18 snowstorm that it wasn't working during the snowstorm;
19 is that correct?

20 A Correct.

21 Q And, as far as that, is that -- as far as GPS
22 sort of going down in the DPW trucks, is that abnormal
23 or how often would that occur?

24 A Yes. It happens several times throughout the
25 year for various reasons. They have a radio repeater.

1 It's connected through a network. It runs software on
2 a server that we have in-house. The server is
3 rebooted. The network goes down. Things are, you
4 know, changed for various reasons and we need to re-
5 establish connection to whatever recorder it is for
6 that repeater. And then the information is then picked
7 up.

8 Q Now, taking you back to the Canton Public
9 Library video that you provided to the trooper, were
10 you told anything about sort of any type of vehicle or
11 anything to be looking for within that particular video
12 time frame that they were asking about?

13 A Not that I recall.

14 Q And do you recall ever actually watching the
15 video, itself, as far as confirming sort of what it
16 was?

17 A Yes. I mean, I watched it from the time frame
18 to see what we had for information, watched it just to
19 move forward to the end to make sure that there was
20 information and when the record was, you know,
21 physically available. But what was in it, no.

22 MR. LALLY: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MR. LALLY:

25 Q Sir, I'm showing you a disk. I'd just ask you

1 to -- as far as that video from the Canton Public
2 Library, you've seen that video subsequently; is that
3 correct?

4 A This disk with the wording on it?

5 Q Yes.

6 A No. I haven't seen it.

7 Q Not that specific disk. I'm sorry, sir. But
8 the footage, have you been shown that particular video
9 footage or did you review that footage before you gave
10 it to the troopers?

11 A This is not mine to the trooper.

12 Q Understood.

13 MR. LALLY: Your Honor, may we approach?

14 THE COURT: You may.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 MR. LALLY: I just don't know. Is there any
18 objection to the video coming in?

19 MR. YANNETTI: I'm not going to object because
20 he's never seen the disk. You know, as long as it
21 -- I mean, I think he testified that he didn't
22 watch the whole thing.

23 MR. LALLY: No.

24 THE COURT: He watched the beginning and the
25 end just to make sure it was that time period. I

1 mean, in a position of I don't know for sure what's
2 on there. I trust Mr. Lally's word that that's
3 what he provided to us.

4 THE COURT: So I can send the jurors out and
5 have them come back and have them watch it if you
6 want.

7 MR. YANNETTI: Are you going to play it now?

8 MR. LALLY: All I'm looking to do, Your Honor,
9 is just putting it up on the screen from the two
10 different time periods so the jury can get an
11 orientation as to what they're looking at. I'm not
12 playing any specific portion or directing him to
13 anything because this witness didn't --

14 MR. YANNETTI: If I may have a moment?

15 THE COURT: Okay.

16 MR. YANNETTI: I'm not going to object. That
17 can be introduced.

18 THE COURT: All right. Thank you.

19 (Whereupon, the sidebar conference concluded.)

20 THE COURT: All right. So you both agree to
21 the next exhibit?

22 MR. LALLY: Yes, Your Honor.

23 MR. YANNETTI: Yes, Your Honor.

24 THE COURT: So the parties agree that this is
25 the next exhibit, correct?

1 MR. LALLY: Yes, Your Honor.

2 MR. YANNETTI: Yes, Your Honor.

3 (Whereupon, disk with library film footage was
4 entered and marked Exhibit No. 110 in Evidence.)

5 THE COURT REPORTER: Exhibit 110.

6 THE COURT: Thank you.

7 MR. LALLY: Your Honor, with the Court's
8 permission, I would just ask to briefly publish
9 portions.

10 THE COURT: Yes.

11 MR. LALLY: Thank you. Ms. Gillman, if I
12 could have the first video portion from 12:00 a.m.
13 to 1:00 a.m.

14 (Whereupon, the video is played.)

15 MR. LALLY: Please pause it there.

16 BY MR. LALLY:

17 Q Mr. Jutras, do you recognize what's up on the
18 screen?

19 A Yes, I do.

20 Q And as far as the view from this camera, this
21 is from the library; is that correct?

22 A Correct.

23 Q And so as far as what we are looking at here,
24 this is the view from the camera as you observed it on
25 the security camera and as you provided it to the jury,

1 correct?

2 A Yes, sir.

3 Q I'm sorry, sir. Do you have -- is there a
4 laser pointer up on the desk in front of you?

5 A Yes, sir.

6 Q Are you familiar with this area as far as the
7 area of Canton?

8 A Yes. The town hall is right across the
9 street.

10 Q I'm sorry. I stepped right over your words
11 when you were saying that.

12 A Yes. So town hall is right across the street
13 and the intersection here is at Sherman. And this is
14 Washington, the longer street that you see.

15 Q So Washington sort of runs parallel with the
16 screen and then Sherman is the street that appears to
17 intersect with Washington?

18 A Correct.

19 Q In the area of the town hall?

20 A Yes, sir.

21 MR. LALLY: Ms. Gillman, if you could take
22 that down and then just put that up.

23 BY MR. LALLY:

24 Q And, again, sir, what is up on the screen, do
25 you recognize that?

1 A Yes.

2 Q And is this essentially the video that you
3 provided to the troopers that you retrieved from the
4 Canton Town Library from 5:00 a.m. to 6:00 a.m., later
5 on that day of January 29th?

6 A Yes, sir.

7 Q And the orientation as far as Washington
8 Street and Sherman Street, that's all the same in
9 reference to the earlier, and the camera hasn't moved?

10 A Correct.

11 MR. LALLY: Thank you. If I may have one
12 moment, Your Honor?

13 THE COURT: Yes.

14 MR. LALLY: Thank you very much, sir.

15 I have no further questions, Your Honor.

16 MR. YANNETTI: If I may proceed, Your Honor?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. YANNETTI:

20 Q Good afternoon, Mr. Jutras.

21 A Good afternoon, Mr. Yannetti.

22 Q So confirming the state police when they
23 contacted you, they asked for two hours of video
24 footage, right, between 12:00 and 1:00 a.m. on January
25 29th and between 5:00 and 6:00 a.m. on January 29th,

1 correct?

2 A Yes, sir.

3 Q You pulled that video footage or at least
4 arranged for it to be pulled for the state police,
5 correct?

6 A Yes.

7 Q And I believe your testimony was that you
8 checked the beginning and the ending time to make sure
9 that you had the right time periods for those two
10 hours, correct?

11 A Yes.

12 Q But you did not sit down and watch 100 -- I'm
13 sorry -- one hour of snow falling and/or cars driving
14 by the public library, correct?

15 A That is correct.

16 Q You didn't do that between 12:00 and 1:00 or
17 between 5:00 and 6:00?

18 A Correct. I didn't.

19 Q All right. And, at the time that you provided
20 the video footage to the state police, did you know
21 whether or not there was any missing footage within
22 those two hours?

23 A No. Again, I did not play every single second
24 of the video.

25 Q Understood. It's fair to say, and you're

1 certain that you did not cut out any of the video
2 footage in those two time periods, correct?

3 A Correct. It's motion activated. That's the
4 only piece.

5 Q You provided the state police with the raw
6 footage as it existed in your possession at that time,
7 correct?

8 A Yes.

9 Q And, at that time, you knew that the raw
10 footage was only saved for between 30 and 60 days?

11 A That one is less than 30. Yes.

12 Q Right. Now, as of early February when you
13 were dealing with the state police, you knew that Karen
14 Read had been arrested and charged in court, correct?

15 A I do not recall if I had that information.

16 Q You knew that there had been a police officer
17 found dead on the lawn of another police officer in
18 Canton?

19 A At that time in February, I believe so.

20 Q And that likely would have been discussed when
21 the state police called you?

22 A I do not recall the conversation other than
23 asking for video footage for Washington Street.

24 Q And I'm sorry, sir. If you could just keep
25 your -- if I can't hear you, I guarantee that these

1 last jurors can't hear you. Could you just repeat that
2 last question?

3 A Yup. Again, in the conversation with it, we
4 had the dates and the time frames. And anything else
5 relative to it, I do not recall specifically.

6 Q Okay. So you don't have a memory of what you
7 were being asked for this?

8 A Correct. I know it was for a motor vehicle
9 accident. Who and what, I do not recall if that was
10 ever mentioned specifically.

11 Q Okay. And you would agree with me that as the
12 I.T. director, you have the ability if you wanted to to
13 download the footage onto some hard drive to preserve
14 it if you wanted to do that?

15 A Yes.

16 Q Did any state trooper ever ask you to download
17 and preserve that footage so that it would exist longer
18 than that 30- to 60-day period?

19 A No.

20 Q And so it's fair to say you did not do that,
21 correct?

22 A Correct.

23 Q You complied with what they asked you to do?

24 A Yes.

25 Q Now, skipping ahead to April 6th of 2023, you

1 were contacted by Michael Proctor, a state trooper
2 investigating this matter, correct?

3 A I do not recall.

4 Q Do you recall Michael Proctor asking you to
5 provide to the defense in this case the same raw
6 footage that you had previously provided to the state
7 police?

8 A No.

9 Q And you don't recall telling him that you
10 couldn't do that because after 30 to 60 days, the
11 footage is gone, correct?

12 A I had a phone call with what I thought was
13 Trooper Dunne, asking for another copy of the data and
14 telling him that I did not have it and I couldn't
15 recreate it.

16 Q I see. So you assume --

17 A If it was Proctor. But no. I thought I was
18 speaking with Trooper Dunne.

19 Q Trooper Dunn was the name that you remembered
20 from February of --

21 A Correct. That was the first interaction I
22 had.

23 Q And, when they mentioned state police, you
24 assumed it was the same state police trooper, correct?

25 A Yes.

1 Q It's fair to say that once you shared the
2 footage with the state police in February of 2022, you
3 didn't control what they did with it after that,
4 correct?

5 A Correct.

6 Q And you have no personal knowledge about how
7 they preserved it or didn't preserve it, correct?

8 MR. LALLY: Objection.

9 THE COURT: I'll allow it. Do you have any
10 idea?

11 THE WITNESS: No.

12 BY MR. YANNETTI:

13 Q And one last question. You cannot testify
14 about whether any video was removed from the footage
15 after you provided it, correct?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 MR. YANNETTI: Nothing further. Thank you.

19 THE COURT: Anything further?

20 MR. LALLY: No redirect, Your Honor.

21 THE COURT: All right, sir. You are all set.

22 (Whereupon, the witness was excused.)

23 THE COURT: Do you have another witness,
24 Mr. Lally?

25 MR. LALLY: I do not, Your Honor. May we

1 approach?

2 THE COURT: Yes.

3 (Whereupon, there was a sidebar conference as
4 follows:)

5 MR. LALLY: My apologies, Your Honor. I don't
6 want to hold the jury up any more, but so
7 Lieutenant O'Hara would have been the next witness.
8 He had a homicide that he was called out to in
9 Worcester and then some other thing that he had to
10 go to assist in Rhode Island. So he is not
11 available.

12 THE COURT: Okay. And plus I didn't tell you
13 that we were going to 4:30. Where do we stand? I
14 know the jurors must be dying to know whether we
15 are on schedule or not, especially I would not have
16 given these three days off had I known that it was
17 going to be behind. We have picked up the pace
18 considerably, though.

19 MR. LALLY: I think we are a lot closer than
20 we were coming into this week. I can say that.

21 THE COURT: Any idea when you might finish up?

22 MR. LALLY: Hopefully mid-July, by the end of
23 that second week. There are a few witnesses that
24 may take some time.

25 MR. YANNETTI: You're asking me?

1 THE COURT: Yes.

2 MR. YANNETTI: I think we have one week with
3 the defense case. We are talking the week of June
4 19th, maybe by the end of that week to finish up.

5 THE COURT: All right. So that actually puts
6 us on schedule, which I'm going to tell them today.
7 Next week we are a full day Monday, down Tuesday,
8 full day Wednesday, half a day Thursday, off
9 Friday.

10 MR. YANNETTI: Oh, off Friday too? Okay.

11 THE COURT: Court Order: Jurors or Juror Issues
12
13

14 MR. YANNETTI: That's fine.

15 THE COURT: Let's try and be as concise as
16 possible. And we will talk after the jury goes
17 out.

18 MR. LALLY: Thank you.

19 (Whereupon, the sidebar conference concluded.)

20 THE COURT: So, jurors, in fairness, I didn't
21 tell the lawyers that I was hoping to go until 4:30
22 today, and I understand, as sometimes happens with
23 law enforcement witnesses, they get called away.
24 So that is it for today.

25 Now, next week I would like to go as much as

1 we possibly can on the days that we're here for
2 full days. So Monday is a full day. I would like
3 to go until 4:30 if everybody can with a shortened
4 lunch hour. Tuesday we are not in session.
5 Wednesday is a full day again. We'll go right to
6 4:30 with a shortened lunch. Thursday is a half
7 day, maybe even closer to 12:00. And Friday we
8 will not be in session. So those are the dates
9 that we gave you before. So we will get as much
10 done as we possibly can during that period of time.
11 Okay?

12 So those same cautions. Please do not discuss
13 this case with anyone. Don't do any independent
14 research or investigation into this case. If you
15 happen to see, hear or read anything about this
16 case, please disregard it. You've got a few days
17 off. Just disregard this case. Don't think about
18 it. Leave everything here and have a great few
19 days. We will see you next week.

20 (Whereupon, the jury is escorted from the courtroom
21 at 4:03 p.m. and excused for the weekend.)

22 THE COURT: I will actually see you over here
23 for scheduling.

24 (Whereupon, there was a sidebar conference as
25 follows:)

1 MS. LITTLE: And, Your Honor, this was "SS."

2 THE COURT: What was that, Mr. Little?

3 MS. LITTLE: I just wanted to give you "SS."

4 THE COURT: Did you get to look at these yet?

5 MR. LALLY: No, but I --

6 THE COURT: All right. So I'll give those to
7 you. You can look at them and we will mark them
8 first thing Monday morning. So you don't have to
9 look at them right now.

10 MR. LALLY: Thank you.

11 THE COURT: So who do you anticipate calling
12 -- oh, do you have another exhibit?

13 MS. LITTLE: I'm just returning that to you.

14 THE COURT: All right.

15 MR. LALLY: So I would start off with
16 Lieutenant O'Hara.

17 THE COURT: What was his involvement?

18 MR. LALLY: He is the SERT team.

19 THE COURT: Okay.

20 MR. LALLY: Next, the one thing I do need to
21 mention is there is another witness that I'm
22 probably going to have to take out of turn. It is
23 Ashley Vaillier from the crime lab.

24 THE COURT: Okay.

25 MR. LALLY: So she is only available next

1 week. After that, she flies to -- I think she's
2 going away for a few weeks or basically the rest of
3 June. Later in the week, she has some testimonial
4 obligations in I think Lawrence and Peabody. So
5 she was looking to do those like Thursday-Friday.
6 Somewhere in there.

7 So what I was hoping to do was to take her out
8 of order and get her done on Monday.

9 THE COURT: Okay.

10 MR. LALLY: The other thing with reference to
11 Ashley Vaillier is that I said I would express this
12 to the Court and to counsel. So it's a pronoun
13 situation.

14 THE COURT: Okay.

15 MR. LALLY: So it is not Ms. Vaillier. It is
16 not Mr. Vaillier. It is Mx. Vaillier. So M-x-.
17 That's how they prefer to be referred to. So I
18 just wanted to flag that for the Court.

19 THE COURT: Okay. And what is Mx. Vaillier's
20 title? Is it easier to call Mx. by a title?

21 MR. LALLY: Not really. I mean, she's a
22 Forensic Scientist II with the trace unit.

23 THE COURT: Okay. That's fine. Who else do
24 you anticipate next week? And I won't hold you to
25 it. I just want to figure out the best way to

1 spend the next three days.

2 MR. LALLY: No. So I think it would be
3 Officer Barros from the Dighton Police, Sergeant
4 Bukhenik and some combination of CPAC or CARS. And
5 then we get into the lab and those type of
6 witnesses.

7 THE COURT: Okay.

8 MR. YANNETTI: If I text you over the weekend,
9 would you probably have a better idea of the lineup
10 for Monday?

11 MR. LALLY: Oh, sure. Yes.

12 MR. YANNETTI: I can text your clerk if you'd
13 like, as well.

14 THE COURT: Or email. I just would like an
15 idea of who we might have on Monday.

16 MR. LALLY: Sure.

17 THE COURT: All right. Do you believe you
18 still need voir dire of the defense experts?

19 MR. LALLY: Yes, in a lot of ways. Also, I
20 think I had notice last week of a different
21 forensic pathologist of which I have a curriculum
22 vitae, but I don't have any reports or anything to
23 do with that witness. Some forensic pathologist
24 from the California penal system is all I know.

25 THE COURT: All right. And that's always

1 problematic after the jurors have been given names
2 of witnesses.

3 MR. LALLY: This one I don't think was on the
4 defense's witness list.

5 THE COURT: No. That's what I mean. That's
6 why it's problematic. All right. I suggest you
7 get him everything he needs for that witness.

8 MR. YANNETTI: Of course.

9 THE COURT: And, if there is a motion to
10 exclude that witness, we will have to deal with
11 that.

12 MR. YANNETTI: Okay.

13 THE COURT: Anything else.

14 MR. LALLY: I think as far as a housekeeping
15 matter, Your Honor, what had been Exhibit 48 did
16 not have the redactions that the Court had wanted
17 as far as phone numbers were concerned. Mr. Gilman
18 has since done that. So what I would move to
19 formerly do is to convert what had been marked as
20 Exhibit 48 to the next identification number and
21 the redacted portion make Exhibit 48.

22 THE COURT: Okay. So where is Exhibit 48?

23 MR. LALLY: Right here. So that is Exhibit
24 48.

25 THE COURT: So we will now mark what was

1 previously 48 for identification.

2 THE COURT REPORTER: That will be "TT" for
3 Identification, Your Honor.

4 THE COURT: And by agreement -- oh, we had
5 already marked this.

6 MR. LALLY: The book had been marked
7 previously.

8 THE COURT: All right. I said I'd like you
9 put in "SS" as an exhibit with the redactions.
10 Madam is planning on being here until 4:30 now,
11 anyway. I said I wasn't going to make you look at
12 it. Can you do it quickly?

13 MR. LALLY: I don't think it's going to take
14 me more than two minutes.

15 MS. LITTLE: It's only two short sentences.

16 MR. LALLY: I think I know the areas that
17 Ms. Little wants redacted.

18 THE COURT: Okay. You take a look at that.
19 I'll tell you what areas I thought would be
20 redacted, and they are probably the same. From
21 page 104?

22 MR. LALLY: Yes. I can see an argument for
23 the first -- but when we get to the medical
24 terminology as far as report of initial rhythm,
25 asystole, given epinephrine, I think that comes in.

1
2 MS. LITTLE: I can make it shorter if you
3 want. I will say it's repeated here and I left
4 it unredacted. I think I accidentally just
5 redacted --

6 THE COURT: All right. So I agree if you --
7 page 104, some people tend to read the first few
8 pages more than they read the last few pages. I
9 would end it right after "call to EMS." Just the
10 hearsay part.

11 MS. MC LAUGHLIN: I'll take care of that right
12 now.

13 THE COURT: Okay.

14 MR. LALLY: I think that's similar to what's
15 here on page, the other page 104.

16 THE COURT: I don't have that.

17 MR. YANNETTI: Isn't that 104

18 THE COURT: We just did 104.

19 MR. YANNETTI: That says 104.

20 THE COURT: Right. But --

21 MR. LALLY: There's a couple different 104s.

22 THE COURT: But I only have -- "SS" only have
23 one 104. So you have a different document. Oh,
24 maybe not. All right. Fix it. Fix it.

25 Nancy, we'll do this on Monday. So this slows

1 us down. It takes extra time with all the court
2 staff. So when I say something needs to be done by
3 1:15, it really needs to be done by 1:15.

4 MR. LALLY: I understand.

5 THE COURT: With the items not going in or
6 it's going in with no redactions. That's not the
7 right thing to do either.

8 All right. We will see you all Monday.

9 MR. LALLY: Thank you.

10 MS. LITTLE: Thank you.

11 (Whereupon, unredacted Exhibit No. 48 was entered
12 and marked "TT" for Identification.)

13 (Whereupon, the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 24-3 to 24-261, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 12th day of February, 2025.

\s\Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist